

No. 12514

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United States  
Court of Appeals  
For the Ninth Circuit.

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ORESTUS CAVNESS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record  
In Two Volumes  
Volume I  
(Pages 1 to 330)

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Appeal from the United States District Court  
District of Hawaii.

FILED

JUL 10 1950

PAUL P. O'BRIEN,

CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS  
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UNITED STATES DISTRICT ATTORNEY, by  
HOWARD K. HODDICK, ESQ.,

Assistant U.S. District Attorney,

Federal Building,

Honolulu, T. H.

For the Plaintiff,

United States of America.

FONG, MIHO & CHOY, by

KATSURO MIHO, ESQ.,

Suite 202, Alakea Building,

Alakea and King Streets,

Honolulu 13, T. H.,

For the Defendant, Orestus Cavness.

In the United States District Court  
for the District of Hawaii

Cr. No. 10,256  
(26 U.S.C. Section 2553(a))

UNITED STATES OF AMERICA,  
Plaintiff,  
vs.

ORESTUS CAVNESS,  
Defendant.

### WARRANT FOR ARREST

I hereby order a Bench Warrant to issue forthwith on the within Indictment for the arrest of the defendant named therein, bail being fixed at \$. . . . .

/s/ D. E. METZGER,  
Judge, United States District Court for the District  
of Hawaii.

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[Title of District Court and Cause.]

### INDICTMENT

The Grand Jury Charges:

That on or about the 19th day of July, 1949, in the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of this Court, Orestus Cavness, did knowingly, wilfully, unlawfully and feloniously purchase a derivative of coca leaves, to wit, 8 capsules, each containing cocaine

which said cocaine was not then and there in the original stamped package and was not from the original stamped package, in violation of Section 2553(a), Title 26, United States Code.

Dated: Honolulu, T. H., this 15th day of September, 1949.

A True Bill,

/s/ HERMAN L. NICKELS,  
Foreman, Grand Jury.

/s/ RAY J. O'BRIEN,  
United States Attorney.

[Endorsed]: Filed September 15, 1949.

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## AFFIDAVIT FOR SEARCH WARRANT

(Internal Revenue Form)

United States of America,  
District of Hawaii—ss.

On this 12th day of July, A.D. 1949, before me, Harry Steiner, a United States Commissioner in and for the District of Hawaii, personally appeared Gerry Wilson, who being duly sworn, deposes and says:

That she has good reason to believe and does believe that in and upon certain premises within the District of Hawaii, to wit, the premises known as:

and particularly described as follows:

in a one story wooden-frame building located at 3811 Leahi Avenue, Honolulu, T. H., said wooden-frame building is painted white with red trimming. The entrance of said building is on Leahi Avenue.

there have been and are now located and concealed and sold certain property used as the means of committing a fraud upon the revenue of the United States, to wit:

Cocaine in violation of Internal Revenue Code, Sections 2553(a) and 2593(a).

That the facts tending to establish the grounds of this application and the probable cause of affiants believing that such facts exist, are as follows:

That the Affiant, Gerry Wilson, on July 10, 1949, visited the above-described premises and purchased one (1) capsule of Cocaine from a negro man known to her as Orestus Cavness, who lives on said premises. The Affiant, Gerry Wilson, further states that she had purchased Cocaine from Orestus Cavness on numerous occasions from June to July, 1949, inclusive, in said premises. From the Affiant's observation, she finds that these premises are a place where Cocaine is kept for sale and replenished when needed. Affiant further states that while in the premises on numerous occasions she had seen Orestus Cavness after he had received the money he would go into another part of the house and return in a few minutes and would deliver the Cocaine to the customers.

Wherefore, your affiant prays that a Search War-



rant may issue authorizing a search of the aforesaid premises in the manner provided by law.

/s/ GERRY WILSON.

Sworn to and subscribed before me, this 12th day of July, 1949.

[Seal]      /s/ H. STEINER,  
United States Commissioner,  
District of Hawaii.

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District Court of the United States  
District of Hawaii Division

Commissioner's Docket No. 3  
Case No. 127

UNITED STATES OF AMERICA

vs.

ORESTUS CAVNESS,

SEARCH WARRANT

To William K. Wells, Acting District Supervisor,  
Bureau of Narcotics:

Affidavit having been made before me by Gerry Wilson that she is positive that on the premises known as in a one story wooden-frame building located at 3811 Leahi Avenue, Honolulu, T. H., said wooden-frame building is painted white with red trimming. The entrance of said building is on Leahi

Avenue. In Honolulu, District of Hawaii, there is now being concealed and sold certain property, namely Cocaine, in violation of Internal Revenue Code, Sections 2553(a) and 2593(a) which are that the Affiant, Gerry Wilson, on July 10, 1949, visited the above-described premises and purchased one (1) capsule of Cocaine from a negro man known to her as Orestus Cavness, who lives on said premises. The Affiant, Gerry Wilson, further states that she had purchased Cocaine from Orestus Cavness on numerous occasions from June to July, 1949, inclusive, in said premises. From the Affiant's observation, she finds that these premises are a place where Cocaine is kept for sale and replenished when needed. Affiant further states that while in the premises on numerous occasions she had seen Orestus Cavness after he had received the money he would go into another part of the house and return in a few minutes and would deliver the Cocaine to the customers and I am satisfied that there is probable cause to believe that the property so described is being concealed on the premises above described and that the foregoing grounds/ for application for issuance of the search warrant exist.

You are hereby commanded to search forthwith the place named for the property specified, serving this warrant and making the search at any time in the day or night and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return

this warrant and bring the property before me within ten days of this date, as required by law.

Dated this 12th day of July, 1949.

/s/ HARRY STEINER,  
U.S. Commissioner.

### RETURN

I received the attached search warrant July 12, 1949, and have executed it as follows:

On July 19, 1949, at 5:40 o'clock p.m., I searched (the person) (the premises) described in the warrant and

I left a copy of the warrant with Orestus Cavness together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

2 capsules suspected to be cocaine adhesive to the top of a Vicks Inhaler. 1 shattered base of Vicks Inhaler matching above part. 6 capsules suspected to be cocaine. 4 pieces of shattered Vicks Inhaler tube. 1 empty Vicks Inhaler tube. 1 box containing 31 empty gelatin capsules No. 5.

This inventory was made in the presence of Orestus Cavness and Capt. Hugh L. Whitford.

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

/s/ WILLIAM K. WELLS.

Subscribed and sworn to and returned before me  
this 20th day of July, 1949.

[Seal]        /s/ H. STEINER,  
United States Commissioner.

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[Title of District Court and Cause.]

MOTION FOR THE SUPPRESSION  
OF EVIDENCE

Orestus Cavness hereby moves this Court to direct that certain property, to wit: A 1948 blue Hudson Sedan License Plate Number H-9530, as well as two (2) capsules adhesive to the top of a Vicks Inhaler, one shattered base of Vicks Inhaler, six (6) capsules, four (4) pieces of shattered Vicks Inhaler tube and one (1) empty Vicks Inhaler tube which, on the 19th day of July, 1949, at or about 5:40 p.m., on or near the premises known as 3811 Leahi Avenue, in the City and County of Honolulu, District of Hawaii, was unlawfully seized and by certain deputies of the United States Marshal of this District whose true names and number are unknown to the Defendant, be suppressed as evidence against him in any criminal proceeding.

The Defendant further states that the property was seized against his will and without a search warrant.

Dated at Honolulu, T. H., this 5th day of December, A.D. 1949.

ORESTUS CAVNESS,

Defendant,

By FONG, MIHO & CHOY,

His Attys.,

By /s/ K. MIHO.

Amended 12-7-49

Additional Grounds

Incorrectness of dates charged in  
the search warrant.

[Title of District Court and Cause.]

AFFIDAVIT OF ORESTUS CAVNESS

Territory of Hawaii,

City and County of Honolulu—ss.

Orestus Cavness, being first duly sworn, on oath,  
deposes and says:

That he is the owner of a blue 1948 Hudson sedan  
bearing Territory of Hawaii License Plate Number  
H-9530;

That on or about July 19, 1949, at about 5:40 p.m.,  
Affiant drove his aforementioned Hudson into or  
near the driveway at 3811 Leahi Avenue, Honolulu,  
Territory of Hawaii, and parked there;

That a certain Deputy of the United States Mar-  
shal for the District of Hawaii and his assistants,  
whose true names are unknown to Affiant, ap-  
proached Affiant just as Affiant was getting out of  
said Hudson;

Subscribed and sworn to and returned before me  
this 20th day of July, 1949.

[Seal]      /s/ H. STEINER,  
United States Commissioner.

---

[Title of District Court and Cause.]

MOTION FOR THE SUPPRESSION  
OF EVIDENCE

Orestus Cavness hereby moves this Court to direct that certain property, to wit: A 1948 blue Hudson Sedan License Plate Number H-9530, as well as two (2) capsules adhesive to the top of a Vicks Inhaler, one shattered base of Vicks Inhaler, six (6) capsules, four (4) pieces of shattered Vicks Inhaler tube and one (1) empty Vicks Inhaler tube which, on the 19th day of July, 1949, at or about 5:40 p.m., on or near the premises known as 3811 Leahi Avenue, in the City and County of Honolulu, District of Hawaii, was unlawfully seized and by certain deputies of the United States Marshal of this District whose true names and number are unknown to the Defendant, be suppressed as evidence against him in any criminal proceeding.

The Defendant further states that the property was seized against his will and without a search warrant.

Dated at Honolulu, T. H., this 5th day of December, A.D. 1949.

ORESTUS CAVNESS,  
Defendant,  
By FONG, MIHO & CHOY,  
His Attys.,  
By /s/ K. MIHO.

Amended 12-7-49

Additional Grounds

Incorrectness of dates charged in  
the search warrant.

[Title of District Court and Cause.]

AFFIDAVIT OF ORESTUS CAVNESS

Territory of Hawaii,  
City and County of Honolulu—ss.

Orestus Cavness, being first duly sworn, on oath,  
deposes and says:

That he is the owner of a blue 1948 Hudson sedan  
bearing Territory of Hawaii License Plate Number  
H-9530;

That on or about July 19, 1949, at about 5:40 p.m.,  
Affiant drove his aforementioned Hudson into or  
near the driveway at 3811 Leahi Avenue, Honolulu,  
Territory of Hawaii, and parked there;

That a certain Deputy of the United States Mar-  
shal for the District of Hawaii and his assistants,  
whose true names are unknown to Affiant, ap-  
proached Affiant just as Affiant was getting out of  
said Hudson;



That said Deputy of the United States Marshal and his assistant, whose true names and number are unknown to Affiant, then and there did forceably seize and subdue Affiant;

That Affiant, pursuant to a paper handed to him after being subdued, opened the door of the one-story wooden-frame building located at 3811 Leahi Avenue, Honolulu, aforesaid, for the Deputy of the United States Marshal;

That after searching the premises mentioned in said paper, the Deputy of the United States Marshal and his assistants took Affiant to a hospital for first aid;

That the aforementioned United States Marshal did search and then impound the aforementioned Hudson;

That said Hudson was seized against Affiant's will, without probable cause and without warrant;

That Affiant is informed and believes that two (2) capsules adhesive to the top of the Vicks Inhaler, one shattered base of Vicks Inhaler, six (6) capsules, four (4) pieces of shattered Vicks Inhaler tube and one empty Vicks Inhaler tube were seized without probable cause and without warrant and without Affiant's permission;

That the said Hudson seized is not that property described in the paper aforementioned; that the aforementioned paper is a search warrant for only the building located at 3811 Leahi Avenue, Honolulu, aforesaid, and not the entire grounds thereof;

That said search warrant was insufficient on its



face to authorize a search and seizure of Affiant's person, Affiant's Hudson and Affiant's grounds;

That Affiant makes this affidavit in order that the aforementioned property be suppressed as evidence against him in any criminal proceeding; and

Further Affiant sayeth naught.

/s/ ORESTUS CAVNESS.

Subscribed and sworn to before me this 5th day of December, 1949.

[Seal] /s/ TAMIE M. HIRAI,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires March 19, 1953.

### NOTICE OF MOTION

To: United States of America and U. S. District  
Attorney,

You and each of you will please take notice that the foregoing Motion will be presented to the Honorable . . . . ., Judge of the above-entitled Court in his Courtroom in the . . . . ., Honolulu, T. H., on . . . . ., the . . . . day of . . . . ., 1949, at . . . . . o'clock . . m.

ORESTUS CAVNESS,

Defendant,

By FONG, MIHO & CHOY,

His Attys.

By /s/ K. MIHO.

[Endorsed]: Filed December 5, 1949.

The United States District Court  
For the District of Hawaii

From the Minutes of Monday, December 5, 1949

[Title of Cause.]

On this day came Mr. Howard K. Hoddick, Assistant United States District Attorney, and also came the defendant herein with Mr. Katsuro Miho and Mr. John E. Ahrens of the firm Fong, Miho & Choy, his counsel. This case was called for trial.

Motion for the suppression of evidence was presented to the Court and was ordered to be placed on file.

The following jurors were duly empaneled and sworn to try the issues herein:

Earl J. Anderson	Leo F. Andre
Charles H. Dole	Ted Benedict
Herbert A. Clark	Samuel A. Parish
William H. Bomke	Clyde J. Hatchell
Ralph H. Moyers	Richard S. Yoshioka
Andrew K. Koseki	Herbert V. Turner

At 12:05 p.m., the Court ordered that this case be continued to 1:15 p.m., this day for further trial.

At 1:20 p.m., opening statement was made by Mr. Hoddick.

All witnesses were placed under rule of court and excluded from the courtroom.

At 1:25 p.m., Mr. William K. Wells, Agent-in-Charge, Bureau of Narcotics, was called and sworn and testified on behalf of the United States.

One envelope containing eight capsules of cocaine was marked for identification as United States "A."

One envelope containing pieces of a broken Vick's Inhaler Tube was marked for identification as United States "B."

One envelope containing four pieces of a Vick's Inhaler Tube was marked for identification as United States "C."

One envelope containing pieces of a broken Vick's Inhaler Tube was marked for identification as United States "D."

One envelope containing a Vick's Inhaler Tube was marked for identification as United States "E."

One box containing empty capsules was marked for identification as United States "F."

At 4:02 p.m., the Court ordered that this case be continued to December 7, 1949, at 2 p.m. for further trial.

---

The United States District Court  
For the District of Hawaii

From the Minutes of Wednesday, December 7, 1949  
[Title of Cause.]

On this day came Mr. Howard K. Hoddick, Assistant United States District Attorney, and also

came the defendant herein with Mr. Katsuro Miho and Mr. John E. Ahrens of the firm Fong, Miho & Choy, his counsel. This case was called for further trial.

It was stipulated by respective counsel that the jury heretofore empaneled and sworn to try the issues herein was present.

At 2 p.m., Mr. Wells resumed the witness stand and testified further.

Oral motion to amend the motion for the suppression of evidence was granted by the Court.

At 3:43 p.m., Mr. Paul Shaffer, Officer, Honolulu Police Department, was called and sworn and testified on behalf of the United States.

At 4 p.m., the Court ordered that this case be continued to December 8, 1949, at 9 a.m. for further trial.

---

The United States District Court  
For the District of Hawaii

From the Minutes of Thursday, December 8, 1949

[Title of Cause.]

On this day came Mr. Howard K. Hoddick, Assistant United States District Attorney, and also came the defendant herein with Mr. Katsuro Miho and Mr. John E. Ahrens of the firm of Fong, Miho & Choy, his counsel. This case was called for further trial.

It was stipulated by respective counsel that the

jury heretofore empaneled and sworn to try the issues herein was present.

At 9:03 a.m., Mr. Shaffer resumed the witness stand and testified further.

United States "C" for identification was offered in evidence by the government.

At 10:55 a.m., the jury was excused and argument was had on the offer in evidence.

At 11 a.m., the jury was summoned and then excused until 2 p.m. this day.

At 11:15 a.m., oral motion to further amend the motion for the suppression of evidence was granted by the Court.

Argument was then had by Mr. Ahrens and Mr. Miho on said motion to suppress.

Mr. Orestus Cavness, defendant herein, was called and sworn and testified on his own behalf on motion to suppress.

At 12:22 p.m., the Court ordered that this case be continued to 1:30 p.m., this day for further trial and the clerk was instructed to notify the jury to appear on December 9, 1949, at 9 a.m.

At 1:40 p.m., the defendant Cavness resumed the witness stand and testified further.

At 2:25 p.m., Mr. Roger C. Marcotte, Officer, Honolulu Police Department, was called and sworn and was temporarily withdrawn.

At 2:40 p.m., Mr. Arthur F. Abbey, Reserve Police Officer, Honolulu Police Department, and Deputy High Sheriff, Territory of Hawaii, was called and sworn and testified on behalf of the United States on motion to suppress.

At 3:30 p.m., the witness Marcotte was recalled and testified on behalf of the United States on motion to suppress.

At 3:45 p.m., Mr. Alfred A. Souza, Sergeant, Honolulu Police Department, was called and sworn and testified on behalf of the United States on motion to suppress.

At 4:26 p.m., the Court ordered that this case be continued to December 9, 1949, at 9 a.m. for further trial.

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The United States District Court  
For the District of Hawaii

From the Minutes of Friday, December 9, 1949

[Title of Cause.]

On this day came Mr. Howard K. Hoddick, Assistant United States District Attorney, and also came the defendant herein with Mr. Katsuro Miho and Mr. John E. Ahrens of the firm Fong, Miho & Choy, his counsel. This case was called for further trial.

At 9:05 a.m., Mr. Hugh Whitford, Lieutenant, Honolulu Police Department, was called and sworn and testified on behalf of the United States on motion to suppress.

At 9:43 a.m., argument was had by Mr. Ahrens.

At 10:18 a.m., the jury was summoned and then excused until December 12, 1949, at 9 a.m.

At 10:35 a.m., argument was had by Mr. Hoddick.



At 11:35 a.m., argument was had by Mr. Miho and Mr. Ahrens.

At 12:08 p.m., upon the evidence adduced, the Court denied the motion for the suppression of evidence and ordered that this case be continued to December 12, 1949, at 9 a.m. for further trial.

---

The United States District Court  
For the District of Hawaii

From the Minutes of Monday, December 12, 1949

[Title of Cause.]

On this day came Mr. Howard K. Hoddick, Assistant United States District Attorney, and also came the defendant herein with Mr. Katsuro Miho and Mr. John E. Ahrens of the firm Fong, Miho & Choy, his counsel. This case was called for further trial.

It was stipulated by respective counsel that the jury heretofore empaneled and sworn to try the issues herein was present.

At 9:05 a.m., the witness Shaffer resumed the witness stand and testified further.

United States "C" for identification was admitted in evidence as United States Exhibit No. 1, marked and ordered filed.

At 9:30 a.m., Mr. Arthur F. Abbey, Reserve Police Officer, Honolulu Police Department, and Deputy High Sheriff, Territory of Hawaii, was called and sworn and testified on behalf of the United States.

One small envelope containing a tube top and empty parts of capsules was marked for identification as United States "A-1."

One small envelope containing two empty and four full capsules was marked for identification as United States "A-2."

At 10:55 a.m., Mr. Gilbert J. Carr, United States Customs Chemist, was called and sworn and testified on behalf of the United States.

United States "A-2" for identification was admitted in evidence as United States Exhibit No. 2-A, marked and ordered filed.

United States "A-1" for identification was admitted in evidence as United States Exhibit No. 2-B, marked and ordered filed.

United States Customs Laboratory Card No. 200-201 was admitted in evidence as United States Exhibit No. 2-C, marked and ordered filed.

At 11:51 a.m., Mr. Hugh Whitford, Lieutenant, Honolulu Police Department, was called and sworn and testified on behalf of the United States.

At 12 noon, the Court ordered that this case be continued to 2 p.m. this day for further trial.

At 2 p.m., the witness Whitford resumed the witness stand and testified further.

At 3:18 p.m., Mr. Alfred A. Souza, Sergeant, Honolulu Police Department, was called and sworn and testified on behalf of the United States.

At 4:03 p.m., Mr. Miho requested that the Court and Jury view the premises at 3811 Leahi Avenue, Honolulu, T. H.



At 4:05 p.m., the Court ordered that this case be continued to December 13, 1949, at 9 a.m. for further trial.

---

The United States District Court  
For the District of Hawaii

From the Minutes of Tuesday, December 13, 1949

[Title of Cause.]

On this day came Mr. Howard K. Hoddick, Assistant United States District Attorney, and also came the defendant herein with Mr. Katsuro Miho and Mr. John E. Ahrens of the firm Fong, Miho & Choy, his counsel. This case was called for further trial.

It was stipulated by respective counsel that the jury heretofore empaneled and sworn to try the issues herein was present.

At 9:30 a.m., the jury was excused and argument was had by Mr. Miho on motion for a mistrial.

At 9:37 a.m., argument was had by Mr. Hoddick.

At 9:50 a.m., closing argument was had by Mr. Miho.

At 9:51 a.m., motion for a mistrial was denied by the Court.

At 9:55 a.m., the jury was summoned and the witness Sousa resumed the witness stand and testified further.

At 10:15 a.m., Mr. Harry L. Pestano, Officer, Honolulu Police Department, was called and sworn and testified on behalf of the United States.

At 10:26 a.m., the jury was excused and a discussion was had by the Court and respective counsel on the Court's ruling on motion to suppress.

At 10:50 a.m., the jury was summoned.

At 11:07 a.m., the government rested its case.

Motion for judgment of acquittal was made by Mr. Ahrens.

At 11:10 a.m., the jury was excused until 2 p.m. this day, and at 11:15 a.m., argument was had by Mr. Ahrens on said motion.

At 11:40 a.m., argument was had by Mr. Hoddick.

At 12 noon, the Court ordered that this case be continued to 2 p.m. this day for further trial.

At 2:05 p.m., the Court and jury proceeded to view the premises at 3811 Leahi Avenue, Honolulu, T. H., returning at 3:07 p.m.

Motion for judgment of acquittal was denied by the Court.

At 3:10 p.m., Mr. Orestus Cavness, defendant herein, was called and sworn and testified on his own behalf.

At 3:35 p.m., the jury was excused and argument was had by Mr. Hoddick on the objections of Mr. Miho to a question directed to the witness.

At 3:40 p.m., the jury was summoned and examination of the witness continued.

At 3:50 p.m., the Court ordered that this case be continued to December 14, 1949, at 9 a.m. for further trial.

The United States District Court  
For the District of Hawaii

From the Minutes of Wednesday, December 14, 1949

[Title of Cause.]

On this day came Mr. Howard K. Hoddick, Assistant United States District Attorney, and also came the defendant herein with Mr. Katsuro Miho and Mr. John E. Ahrens of the firm Fong, Miho & Choy, his counsel. This case was called for further trial.

It was stipulated by respective counsel that the jury heretofore empaneled and sworn to try the issues herein was present.

At 9:04 a.m., the defendant resumed the witness stand and testified further.

At 9:30 a.m., Dr. Thomas Min, City & County Health Department, was called and sworn and testified on behalf of the defendant.

At 9:40 a.m., the defendant rested his case.

At 9:42 a.m., Mr. Roger C. Marcotte, Officer, Honolulu Police Department, was called and sworn and testified on behalf of the United States.

At 9:50 a.m., both sides rested.

Motion for judgment of acquittal was made by Mr. Ahrens.

The jury was excused until 2 p.m. this day and at 10:10 a.m. argument was had by Mr. Ahrens on said motion.

At 10:47 a.m., argument was had by Mr. Hoddick.

At 11 a.m., closing argument was had by Mr. Miho.

At 11:10 a.m., the motion was denied by the Court and the matter of settling instructions was taken up in chambers.

At 2:25 p.m., opening argument was had by Mr. Hoddick.

At 2:35 p.m., argument was had by Mr. Miho, followed at 3:35 p.m., with argument by Mr. Hoddick.

At 3:51 p.m., the Court instructed the jury.

At 4:25 p.m., the jury having been excused, the defendant objected to the Court's refusal to give Defendant's Requested Instructions Nos. 1, 12, 13, 16, and 15 as amended, and to the giving of United States Instructions Nos. 5, 6 as amended, and 8. Objections were overruled by the Court. (

At 4:30 p.m., the jury was summoned and Mr. Otto F. Heine and Mr. E. U. Moses, United States Marshal and Deputy United States Marshal, respectively, were sworn as bailiffs to take charge of the jury during its deliberations.

At 6:10 p.m., the jury, in the presence of respective counsel and the defendant, and through its foreman returned the following verdict of guilty which was ordered to be placed on file:

Cr. No. 10,256

(26 U.S.C. Section 2553(a) )

“UNITED STATES OF AMERICA,

Plaintiff,

vs.

ORESTUS CAVNESS,

Defendant.

“VERDICT

“We, the Jury, duly empaneled and sworn in the above-entitled cause, do hereby find the defendant, Orestus Cavness, guilty as charged in the indictment herein.

“Dated: Honolulu, T. H., this 14th day of December, 1949.

/s/ LEO F. ANDRE,  
Foreman.”

Upon request of Mr. Ahrens, the jury was polled by the Court as to the verdict returned, the verdict being confirmed by each juror.

Mr. Ahrens excepted to the verdict.

Upon the verdict of guilty, the Court adjudged the defendant guilty as charged in the Indictment and ordered that this case be continued to December 28, 1949, at 10 a.m. for sentence and pre-sentence investigation.

[Title of District Court and Cause.]

RENEWAL OF MOTION OF JUDGMENT  
OF ACQUITTAL

Comes now Orestus Cavness, Defendant in the above-entitled cause, in the above-entitled Court, by his attorneys Fong, Miho & Choy, and respectfully renews his Motion for Judgment of Acquittal on the ground that the verdict rendered in said cause on December 14, 1949, is contrary to the law and the weight of the evidence in that the evidence is insufficient to sustain a conviction because the United States failed to prove that the capsules and parts thereof, which contained cocaine were not in the original stamped package, did not have tax stamps on them, and did not come from the original stamped package.

The Court erred in holding that part of Section 2553(a) of Title 26 of U.S.C.A., as amended by Act July 1, 1944, pertaining to the presumption concerning possession constitutional. The United States also failed to prove that the Defendant on July 19, 1949, knowingly had possession and purchased eight (8) capsules containing cocaine which said cocaine was not then and there in the original stamped package and was not from the original stamped package as charged in the indictment.

Dated at Honolulu, T. H., this 19th day of December, A.D. 1949.

ORESTUS CAVNESS,  
Defendant.

By FONG, MIHO & CHOY,  
His Attorneys.

By /s/ JOHN E. AHRENS.

[Title of District Court and Cause.]

ALTERNATIVE MOTION  
FOR A NEW TRIAL

Comes now Orestus Cavness, Defendant in the above-entitled cause, by his attorneys, Fong, Miho & Choy, and respectfully moves the above-entitled Court for a new trial upon the grounds that the verdict rendered in said cause on December 14, 1949, is contrary to the law and contrary to the evidence on the following grounds. The jury committed error because there was no proof beyond a reasonable doubt that the Defendant committed the offense alleged in the indictment. The above-entitled Court committed error in the following respects among others:

1. The Court erred in denying the Motion for Suppression of evidence because the search warrant issued in the instant case was a search warrant for the house only and not the rest of the premises because the premises were particularly described as being only "in a one-story wooden frame building . . .";



2. The Court erred in holding that the Defendant was legally arrested at the time he allegedly "shoved" Agent Wells;

3. The Court erred in holding that a search of the yard after the Defendant had been taken into the house was legal as an incident to the arrest that took place in the yard;

4. The Court erred in holding the search warrant valid because it was shown by the testimony of Mr. Wells who drew up the affidavit on which the search warrant was based that the affiant did not actually make the purchase referred to in the affidavit on the date alleged;

5. The Court erred in holding that the direction of the United States Commissioner to Mr. Wells in the warrant "you are hereby commanded to serve forthwith the place named for the properties specified," meant the warrant could be executed any time within the ten-day period rather than immediately;

6. The Court erred in denying the defense motion for a mistrial because of the statement of Sergeant Souza made in the presence of the jury to the effect that the Defendant appeared "hopped up." Although objected to, which objection was sustained by the Court who then instructed the jury to disregard said remark, nevertheless, such a statement so impressed the jury that it was not humanly possible to follow the Court's instruction and the jury was influenced by said remark thereby becoming prejudiced against the Defendant making a fair trial impossible;



7. The Court erred in denying the defense motion for a judgment of acquittal at the close of the Government's case because there was insufficient evidence to sustain a conviction, the reasons of which have been more fully set forth in a renewal of motion for judgment of acquittal;

8. The Court erred in holding constitutional that section of 2553(a) of Title 26 of U.S.C.A. dealing with the presumption concerning possession because as amended by Act, July 1, 1949, the presumption is reduced to an absurdity by the change of the word "for" to "from" since it is common knowledge that drugs themselves never have stamps directly attached to them;

9. The Court erred in allowing in evidence the various exhibits because the United States failed to lay a proper foundation for their introduction and because the chain of continuity from the time the exhibits were obtained by the various witnesses until the time they were introduced in the Court was defective;

10. That the Court erred in allowing in evidence that portion of Exhibit 2-A, to wit: four (4) capsules, because those capsules had not been identified as cocaine;

11. The Court erred in allowing in the evidence Exhibit 1-A because the quantity of cocaine present in the damaged capsules was not ascertained;

12. That Mr. Herbert A. Clark, one of the jurors, after instructed to retire to consider the

verdict did leave the confines of the jury room without the permission of the Court and attempted to make one or more phone calls and was, in fact, seen talking on the telephone which constituted a serious violation of his duties as a juror and said action was very harmful to the Defendant and the Defendant was thereby denied a fair trial;

13. That Mr. Samuel A. Parish, who was one of the jurors, is and was at the time of the trial a Reserve Police Officer and that Mr. Parish being in the Courtroom when a question was put to the jury as a whole as to whether or not any member of the jury was or ever had been a member of the Reserve Officer's Police force, Mr. Parish did fail to respond that he had been a member; and that if Mr. Parish were not actually present in the jury box when this question was asked, he upon being called and entering the jury box, knowing that the question was asked to the jury panel as a whole, should have volunteered this information and his failure to do so violated the Defendant's rights seriously and prejudiced the Defendant and made a fair trial impossible;

14. The Court erred in allowing testimony to be introduced over the various objections of the Defendant;

15. The Court erred in refusing to give Defendant's instruction Nos. 1, 12, 13, and 16 as instructed and erred in giving Defendant's instruction No. 15, as amended over objection;

16. The Court erred in giving United States Instruction Nos. 5, 6, as amended, and No. 8 and more particularly United States Instruction No. 6 because it was incomplete and not a true statement of the law.

Dated at Honolulu, T. H., this 19th day of December, A.D. 1949.

ORESTUS CAVNESS,  
Defendant.

By FONG, MIHO & CHOY,  
His Attorneys.

By /s/ JOHN E. AHRENS.

[Endorsed]: Filed December 19, 1949.

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The United States District Court for the  
District of Hawaii

From the Minutes of Thursday,  
December 29, 1949

[Title of Cause.]

On this day came Mr. Howard K. Hoddick, Assistant United States District Attorney, and also came the defendant herein with Mr. John E. Ahrens of the firm Fong, Miho & Choy, his counsel. This case was called for hearing on renewal of motion of judgment of acquittal and alternative motion for a new trial.

At 10:05 a.m., argument was had by Mr. Ahrens.

At 11:08 a.m., Mr. Otto F. Heine, United States

Marshal, was called and sworn and was temporarily withdrawn from the witness stand

Mr. Albert Grain, court reporter, was called and sworn and testified on behalf of the defendant.

At 11:12 a.m., the witness Heine resumed the witness stand and testified on behalf of the defendant.

At 11:42 a.m., Mr. E. U. Moses, Jr., Deputy United States Marshal, was called and sworn and testified on behalf of the defendant.

At 11:54 a.m., Mr. Thomas R. Clark, Chief Deputy United States Marshal, was called and sworn and testified on behalf of the defendant.

At 12:12 p.m., the Court ordered that this case be continued to 1:30 p.m. this day for further hearing and the United States Marshal was instructed to have Juror Clark present at that time.

At 1:45 p.m., the witness Moses was recalled and testified further.

At 1:52 p.m., Mr. Herbert E. Clark, a juror herein, was called and sworn and testified on behalf of the United States.

At 2:30 p.m., further argument was had by Mr. Ahrens.

At 3:10 p.m., argument was had by Mr. Hoddick, followed at 3:31 p.m., by Mr. Ahrens in his closing argument.

At 3:40 p.m., the Court denied said motions.

Exceptions were allowed the defendant.

At 3:52 p.m., the Court ordered that this case be continued to December 30, 1949, at 10 a.m. for sentence.

The United States District Court for the  
District of Hawaii

- From the Minutes of Friday,  
December 30, 1949

[Title of Cause.]

On this day came Mr. Nat. Richardson, Jr., Assistant United States District Attorney, and also came the defendant herein with Mr. Katsuro Miho and Mr. John E. Ahrens of the firm Fong, Miho & Choy, his counsel. This case was called for sentence.

Upon the verdict of guilty, the Court adjudged the defendant guilty as charged in the Indictment and ordered that the defendant be committed to the custody of the Attorney General or his authorized representative for placement by him in an institution of a prison type for a period of Two Years. The Judgment and Commitment reads as follows:

No. Cr. 10,256

(Title 26 U.S.C. Sec. 2553(a))

“UNITED STATES OF AMERICA,

Plaintiff,

vs.

ORESTUS CAVNESS,

Defendant.

[Title of Cause.]

“On this 30th day of December, 1949, came the attorney for the government and the defendant

appeared in person and by counsel Katsuro Miho and John E. Ahrens.

“It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty by jury of the offense of knowingly, wilfully, unlawfully and feloniously purchasing capsules of heroin and grains of cocaine, said heroin and cocaine not then and there being in the original stamped package or from the original stamped package, in violation of section 2553(a), Title 26, United States Code as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

“It Is Adjudged that the defendant is guilty as as charged and convicted.

“It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Two (2) Years.

“It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ J. FRANK McLAUGHLIN,  
U. S. District Judge.

/s/ WM. F. THOMPSON, JR.,  
Clerk.”



Notice of Appeal was given by Mr. Miho.

Later in chamber, upon request of Mr. Miho, mittimus was ordered stayed for ten days and conditioned upon written consent of the bondsman herein for continuation of the appearance bond until that time.

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District Court of the United States for the  
District of Hawaii Division

No. Cr. 10,256

(Title 26 U.S.C. Sec. 2553(a))

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ORESTUS CAVNESS,

Defendant.

### JUDGMENT AND COMMITMENT

On this 30th day of December, 1949, came the attorney for the government and the defendant appeared in person and by counsel Katsuro Miho and John E. Ahrens.

It Is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty by jury of the offense of knowingly, wilfully, unlawfully and feloniously purchasing capsules of heroin and grains of cocaine, said heroin and cocaine not then and there being in the original stamped package or from the original stamped

package, in violation of section 2553(a), Title 26, United States Code, as charged and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Two (2) Years.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the Commitment of the defendant.

/s/ J. FRANK McLAUGHLIN,  
United States District Judge.

The Court recommends commitment to:

/s/ WM. F. THOMPSON, JR.,  
Clerk.



[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of Appellant:

ORESTUS CAVNESS

3811 Leahi Avenue

Honolulu, T. H.

Name and address of Appellant's attorneys:

FONG, MIHO & CHOY

Suite 202, Alakea Building

Alakea and King Streets

Honolulu 13, T. H.

Offense:

Unlawful purchase of a derivative of cocoa leaves, to wit: Eight (8) capsules, each containing cocaine, which said cocaine was not then and there in the original stamped package and was not from the original stamped package, in violation of Section 2553(a), Title 26 U.S.C.

Concise statement of judgment:

On December 30, 1949, after trial by jury on a plea of not guilty by the defendant, a judgment was entered pursuant to a verdict of guilty found by the jury in the above-entitled case on December 14, 1949. The Defendant above named was found guilty of the offense as charged, judgment being entered accordingly, and the Defendant above named was

sentenced to be confined in prison for a term of two (2) years. Bail for the Defendant, having previously been set in the amount of One Thousand Dollars (\$1,000.00), was ordered continued for ten (10) days from the judgment of the above-entitled court pending possible appeal.

I, Orestus Cavness, the above defendant and appellant, by my attorneys, Fong, Miho & Choy, hereby give notice of appeal, and do hereby appeal to the United States Circuit Court of Appeals, Ninth Circuit, from the above-stated judgment.

Dated at Honolulu, T. H., this 9th day of January, A.D. 1950.

ORESTUS CAVNESS,  
Defendant.

By FONG, MIHO & CHOY,  
His Attorneys.

By /s/ JOHN E. AHRENS.

[Endorsed]: Filed January 9, 1950.

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[Title of District Court and Cause.]

#### ELECTION OF DEFENDANT

Judgment in the above-entitled action having been rendered on December 30, 1949, the Defendant having been sentenced to serve in prison for a term of two (2) years and an appeal having been noted in the above-entitled action on January 9, 1950, the

Defendant hereby declares that he does elect not to commence service of the sentence.

Dated at Honolulu, T. H., this 9th day of January, A.D. 1950.

ORESTUS CAVNESS,  
Defendant.

By FONG, MIHO & CHOY,  
His Attorneys.

By /s/ JOHN E. AHRENS.

[Endorsed]: Filed January 9, 1950.

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[Title of District Court and Cause.]

BOND

Know All Men by These Presents:

That we, Orestus Cavness, as Principal, and Fong Hing and Lizzie Fong Hing, as Sureties, are held and firmly bound unto the United States of America in the Full Sum of \$2,500.00 for the payment of which well and truly to be made, we do bind ourselves, our executors and administrators, jointly and severally by these presents,

Whereas, lately, in the District Court for the United States in and for the District and Territory of Hawaii, judgment and sentence were made and entered against Orestus Cavness, Defendant above named, and

Whereas, notice has been given of appeal to the

United States Circuit Court of Appeals for the Ninth Judicial Circuit, to secure a reversal of said judgment and sentence, and

Whereas, the Honorable Frank J. McLaughlin, Judge of said District Court, did regularly order that a supersedeas and bail bond be given in the sum of \$2,500.00 pending said appeal,

Now, Therefore, the condition of the above obligation is such that if the said Orestus Cavness shall appear here in person or by attorney in the United States Circuit Court of Appeals for the Ninth Judicial Circuit on such day or days as may be appointed for the hearing of said cause in said Circuit Court and prosecute his appeal and shall abide by and obey all orders made by said Circuit Court in said cause, and shall pay any fine, damages and all costs imposed by the judgment of said District Court against him, and shall surrender himself in execution of the judgment and sentence appealed from as said Circuit Court may direct, if the judgment and sentence against him shall be affirmed or the appeal dismissed; and if he shall appear for trial in said District Court on such day or days as may be appointed for a retrial of said cause and abide by and obey all the orders made by said District Court, provided the Judgment and sentence made against him shall be reversed by said Circuit Court, then the above obligation shall be void, otherwise to remain in full force, effect and virtue.

In Witness Whereof, the above-bounden Principal and Sureties have hereto affixed their hands this 9th day of January, 1950.

/s/ ORESTUS CAVNESS,  
Principal.

/s/ FONG HING,  
Surety.

/s/ LIZZIE FONG HING,  
Surety.

Taken and acknowledged before me this 9th day of January, 1950.

[Seal] /s/ E. C. ROBINSON,  
Deputy Clerk, United States  
District Court.

Territory of Hawaii  
City and County of Honolulu—ss.

Fong Hing, being first duly sworn on oath, deposes and says that he is the Fong Hing named as a Surety and who filed the foregoing Bond and that he is worth the sum of \$5,000.00 over and above all just debts and liabilities in property situate in the Territory of Hawaii and subject to execution.

/s/ FONG HING.

Subscribed and sworn to before me this 9th day of January, 1950.

[Seal] /s/ E. C. ROBINSON,  
Deputy Clerk, United States  
District Court.

Territory of Hawaii

City and County of Honolulu—ss.

Lizzie Fong Hing, being first duly sworn on oath, deposes and says that she is the Lizzie Fong Hing named as a Surety and who filed the foregoing Bond and that she is worth the sum of \$5,000.00 over and above all just debts and liabilities in property situate in the Territory of Hawaii and subject to execution.

/s/ LIZZIE FONG HING.

Subscribed and sworn to before me this 9th day of January, 1950.

[Seal]      /s/ E. C. ROBINSON,  
Deputy Clerk, United States  
District Court.

Approved as to Form:

/s/ HOWARD K. HODDICK,  
Asst. U. S. Attorney.

Approved as to the Amount and Sufficiency of  
Surety:

/s/ J. FRANK McLAUGHLIN,  
Judge, United States District  
Court.

[Endorsed]: Filed January 9, 1950.

[Title of District Court and Cause.]

COST BOND

Orestus Cavness, Appellant herein and Caesar Lopez Surety, appearing and submitting to the jurisdiction of the Court, hereby undertake for themselves and each of them, their and each of their heirs, executors and administrators, successors and assigns, to make good all taxable costs and charges, not exceeding the sum of Two Hundred Fifty Dollars (\$250.00), that the Appellees may be put to or allowed if the appeal is dismissed or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified.

The said Surety hereby irrevocably appoints the Clerk of this Court as his agent upon whom any papers affecting his liability on this undertaking may be served.

Signed, sealed and delivered this 19th day of January, 1950.

/s/ ORESTUS CAVNESS.

/s/ CAESAR LOPEZ.

Approved:

/s/ HOWARD K. HODDICK,

Asst. United States Attorney.

Territory of Hawaii,

City and County of Honolulu—ss.

Caesar Lopez, being first duly sworn, on oath, deposes and says that he is the Caesar Lopez named as



a Surety and who filed the foregoing Bond and that he is worth the sum of Two Hundred Fifty Dollars (\$250.00) over and above all just debts and liabilities in property situate in the Territory of Hawaii and subject to execution.

/s/ CAESAR LOPEZ.

Subscribed and sworn to before me this 19th day of January, 1950.

[Seal] /s/ TAMIE M. HIRAI,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii.

My commission expires March 19, 1953.

[Endorsed]: Filed January 20, 1950.

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[Title of District Court and Cause.]

AMENDED DESIGNATION OF  
RECORD ON APPEAL

In making up the transcript of record on appeal to the U. S. Circuit Court of Appeals for the 9th Circuit in the above-entitled cause, you will please include the following:

Indictment filed September 15, 1949.

Affidavit and Search Warrant.

Clerks' minutes of December 5, 7, 8, 9, 12, 13, 14, 29, and 30, 1949.

Official reporter's transcript of evidence taken and proceedings had during the trial.



Defendant's motion for the suppression of evidence and affidavit filed on December 5, 1949, in open court.

Official reporter's transcript of all testimony relative to the affidavit, on which the search warrant was based, taken during the hearing on the motion for suppression of evidence.

Alternative motion for new trial filed December 19, 1949.

Clerk's minutes of December 29, 1949.

Official reporter's transcript of testimony taken on December 29, 1949.

Judgment commitment and sentence of the Court.

Notice of appeal filed January 9, 1950.

Election of Defendant filed January 9, 1950.

Bond filed January 9, 1950.

Cost Bond filed January 20, 1950.

This Designation of Record on Appeal filed February 15, 1950.

Dated at Honolulu, T. H., this 15th day of February, A.D. 1950.

ORESTUS CAVNESS,

Defendant.

By FONG, MIHO & CHOY,

His Attorneys.

By /s/ JOHN E. AHRENS.

[Endorsed]: Filed February 15, 1950.

In the United States District Court for the  
Territory of Hawaii

Criminal No. 10,256

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

ORESTUS CAVNESS,  
Defendant.

### TRANSCRIPT OF PROCEEDINGS

In the above-entitled matter, held in the U. S.  
District Court, Honolulu, T. H., on Decem-  
ber 5, 1949,

Before: Hon. J. Frank McLaughlin,  
Judge, and a Jury.

#### Appearances:

HOWARD K. HODDICK, ESQ.,  
Assistant U. S. Attorney, appearing for  
Plaintiff;

NAT RICHARDSON, JR., ESQ.,  
Assistant U. S. Attorney, appearing for  
Plaintiff;

KATSURO MIHO, ESQ.,  
Of the Law Firm of Fong, Miho & Choy,  
Appearing for Defendant;

JOHN AHRENS, ESQ.,  
Of the Law Firm of Fong, Miho & Choy,  
Appearing for Defendant.

The Clerk: Criminal No. 10,256, United States of America versus Orestus Cavness; case called for trial.

(A jury was impanelled and sworn to try the case.)

The Court: Very well. Gentlemen of the jury, I will tell you now and without doubt frequently during the course of this trial that while engaged in your office as jurors to try this case you are not to discuss it or any phase of it with anyone, including fellow jurors. Only when the evidence has been completed and you have received the Court's instructions as to the law and you retire to your jury room, then for the first time are you privileged to discuss it with anyone, and those people who will then come within the category of anyone will be your fellow jurors. Very well. We will recess until 1:15.

(The Court recessed at 12:05 p.m.)

### Afternoon Session

The Court: Very well. This is Criminal No. 10,256, the United States of America versus Orestus Cavness. The parties are ready?

Mr. Hoddick: Ready for the Plaintiff.

Mr. Miho: Ready.

The Court: The jury is present and sworn. The Defendant is present. The Government may at this time proceed to make its opening statement if it so desires.

Mr. Hoddick: May it please the Court, gentle-

men of the jury, the Defendant, Orestus Cavness, was charged by the grand jury of this district on September 15, 1949, in the following words and figures:

“The Grand Jury Charges:

“That on or about the 19th day of July, 1949, in the City and County of Honolulu, Territory of Hawaii, and within the jurisdiction of this Court, Orestus Cavness, did knowingly, wilfully, unlawfully and feloniously purchase a derivative of cocoa leaves, to wit, 8 capsules, each containing cocaine which said cocaine was not then and there in the original stamped package and was not from the original stamped package, in violation of Section 2553(a), Title 26, United States Code.”

Now, as you will later be instructed by the Court, the fact that an indictment has been returned against this Defendant is not to prejudice you in any manner against him or lead you either to determine his guilt or innocence. That is something for you to determine from the evidence adduced at the trial of this case. And on that score the indictment is entirely immaterial.

The Government will adduce evidence which will show that on July 19, 1949, at about 5:40 p.m., the Acting District Supervisor for the Bureau of Narcotics, Mr. Wells, who is [2\*] sitting here on my left, accompanied by other police officers from the Honolulu Police Department, endeavored to serve a search warrant on the Defendant at 3811 Leahi Avenue; that the Defendant resisted the service of

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\* Page numbering appearing at top of page of original Reporter's Transcript.

this search warrant; and that in the course of endeavoring to make the service upon the Defendant it was noted that Mr. Cavness tried to destroy, in fact, tried to swallow a Vicks inhaler tube; and in the course of that struggle the inhaler tube was broken, and from the inhaler tube white particles were seen to fall to the ground.

The Defendant, Mr. Cavness, was finally subdued and taken into the house for the purposes of the search. In fact, he invited the officers to come in there, apparently trying to get them away from the spot where the struggle took place. A couple of the other officers stayed outside and in looking over the ground where the struggle had occurred they found these white particles that consisted of capsules. There were eight of them.

Inside of the house—and we will introduce evidence to prove this—the searching party under Mr. Wells' leadership turned up a Vicks inhaler tube in which the inside portion, a sort of—I expect you are all familiar with Vicks inhaler tubes—the inside portion had broken off so that what you actually had was the cap with the cover and the little portion that screws in the bottom. That was found inside the [3] house. Also found inside the house were 29 gelatine capsules, empty. Later the eight capsules which contained a substance believed by Mr. Wells to be cocaine or some other drug were turned over to a Customs Bureau of Chemists, to a chemist—and we will put him on the stand and he will testify that the contents of those capsules was cocaine.

That in brief is the Government's case, and we are ready to proceed at this time, your Honor.

The Court: Does the Defense wish at this time to make an opening statement?

Mr. Miho: The Defense wishes to reserve its opening statement, your Honor.

The Court: You may do so. You may call the first witness for the Government.

Mr. Hoddick: I don't know whether Defense Counsel desires it or not, but there are quite a number of Government witnesses present in the courtroom, and perhaps he would like to have us exclude all witnesses except the one testifying on the stand.

Mr. Miho: I didn't know that the officers and the witnesses were present in court when the opening statement was made, if your Honor please. I presume that the Defendant should have asked that the rule be invoked at that time. But I notice, in fact, the whole courtroom is practically filled up with the officers who will testify, and I would [4] like to have the rule invoked.

The Court: Very well.

Mr. Hoddick: I would like to have an exception as regards to Mr. Wells.

The Court: That is the rule. Very well, pursuant to the rule all parties who are to be, or all persons who are to be witnesses in this case, with the exception of one for each side, are excluded from the courtroom until they have testified. Very well.



Mr. Hoddick: Mr. Wells, will you take the stand, please.

WILLIAM K. WELLS

a witness in behalf of the Plaintiff, being duly sworn, testified as follows:

Direct Examination

The Court: Will you please state your name, age, residence, occupation and citizenship?

The Witness: William K. Wells; age, 57 years; occupation, Acting District Supervisor for the Bureau of Narcotics for the Territory of Hawaii.

The Court: You live here in Honolulu?

The Witness: Born and raised in Honolulu, yes, sir.

The Court: You are a citizen of the United States?

The Witness: Yes, sir.

The Court: Exclusively? Only?

The Witness: Yes, sir. [5]

By Mr. Hoddick:

Q. Mr. Wells, if you will speak loud enough so that all the members of the jury and the Judge can hear you—how long have you been with the Bureau of Narcotics? A. Twenty-eight years.

Q. And how long have you been Acting District Supervisor of the Bureau of Narcotics?

A. Since 1938.

Q. What was your occupation before you went to the Bureau of Narcotics, Mr. Wells?



(Testimony of William K. Wells.)

A. I was in France two years in the Army prior to that.

Q. And prior to that you were in school?

A. No, sir. I was working for my dad in the automobile business.

Q. During the course of your experience with the Bureau of Narcotics, have you had occasion to make many—and I will use the term advisedly—many raids?

A. Yes, sir.

Q. And in the course of those raids have narcotic substances been turned up?

A. Yes, sir.

Q. As a result thereof, are you familiar with narcotics?

A. Yes, sir.

Q. Are you able to distinguish one narcotic from another?

A. It all depends. If it is powdered morphine, at times.

Q. Pardon?

A. Powdered morphine, which is very fine, sometimes I can't tell the difference between powdered morphine and other fine powder. I have to use acid tests on it.

Q. But there are certain lay tests which you know by which you can tell one narcotic from another, or whether something is a narcotic?

A. Yes, sir.

Q. Do you know the Defendant in this case, Mr. Cavness?

A. I do, sir.

Q. And have you ever had occasion to obtain a warrant for the search of his premises?

(Testimony of William K. Wells.)

A. Yes, sir.

Q. And more than once?                   A. Just once.

Q. And when was that warrant obtained?

A. On July 12, 1949.

Q. And did you make a search of his premises?

A. On July 19, 1949, I tried to serve the search warrant on Mr. Cavness when he——

Q. Well, now, just a second. Did you make a search of the premises? [7]

A. After I served the search warrant on him.

Q. Well, now, will you relate the circumstances which led up to your making this search to the jury and to the Court?

A. On July 19, 1949, accompanied by then Captain Whitford, Sergeant Al Sousa and Richard Sasaki and Officer Paul Shaffer——

Q. All those men are with the Honolulu Police Department?

A. Yes, sir, who were in the house across from Mr. Cavness at 3812 Leahi Avenue for observation purposes. At 3:35—at 3:55 p.m. I saw Mr. Cavness come out, come up to the house with a colored woman. He then walked to the mail box, looked into the mail box and walked back into the yard, conversed with this colored woman for about a minute or so, and the colored woman walked back into Leahi Avenue. Mr. Cavness got into his Hudson sedan, H-5931, and proceeded Ewa on Leahi Avenue.

At about 5:38 p.m. I observed Cavness driving

(Testimony of William K. Wells.)

the same car on Leahi Avenue, coming from the Ewa direction, and he drove and parked into his garage.

Q. One moment. Mr. Wells, this Leahi Avenue is in the City and County of Honolulu?

A. Yes, sir.

Q. Territory of Hawaii? [8]

A. Yes, sir. I came out from the house across the street, followed by the officers, and proceeded towards Mr. Cavness. At that time he had left the front door open, and he had his left leg out. I went out and showed him my badge and told him I was a Federal narcotics agent and had the search warrant to search his premises. Mr. Cavness—at the same time talking to him I saw he had his right hand parked—I mean the top part of a Vicks inhaler tube. He had it clutched in his right hand. Mr. Cavness then shoved me with his left hand.

Q. Did he shove you hard?

A. Quite hard. He gave me a good push. And I grabbed his left hand. I was then assisted by Sergeant Sousa who was in the back of me.

Q. When you grabbed his left hand, did that result in his being pulled out of the car?

A. I think so. And then Mr. Cavness fell on the ground on his knees. We got him up and he tried to get away from us, to run towards the back of the, I would say the back of his yard there. Then Mr. Whitford came to our assistance and he then fell to the ground again. He got up and

(Testimony of William K. Wells.)

then we were assisted by the other officers. That was Paul Shaffer, Arthur Abbey and Sasaki. We struggled there for about three, four minutes. Then we finally got him down on his stomach, and I had a hold of his left hand. By his left wrist, I [9] would say. And Mr. Whitford had his right hand, and I heard Mr. Whitford—they were trying to get his hand open. They couldn't. So Mr. Abbey struck Mr. Cavness' hand several times and it opened. And Mr. Whitford recovered part of the inhaler tube. And I had Mr. Abbey strike Mr. Cavness' left hand to open it and a small object at the time dropped from his hand, and——

Mr. Miho: If your Honor please, at this time I'd like to renew my request on the question of evidence.

Mr. Hoddick: The Government hasn't endeavored to introduce any evidence as yet except for Mr. Wells' testimony.

The Court: The motion is on file, and when it comes up and it is something that it is applicable to, and you have to watch that, I will be glad to pass on it. But at the moment I haven't any knowledge of its applicability.

Q. (By Mr. Hoddick): Please proceed, Mr. Wells.

A. Mr. Cavness at that time said, "Take me in." We got him up on his feet and he was handcuffed with his arms in the back.

Q. Excuse me, Mr. Wells. He had stopped

(Testimony of William K. Wells.)

struggling at this point?      A. At the time.

Q. And were you then able to serve the search warrant on him? [10]

A. No, sir, he wanted me to take him into the house. He said, "Take me into the house." So I took him into the house and served the search warrant on Mr. Cavness.

Q. Where did you serve it?

A. Right in the living room.

Q. That was immediately after you got inside?

A. Yes, sir. After I served the search warrant on him, Mr. Arthur Abbey called and said, "Billy, I found some stuff." Then I took Mr. Cavness outside and he showed me the top piece of a shattered inhaler, Vicks inhaler tube with two capsules of white substance stuck to it. Then Mr. Shaffer found six capsules of white substance.

Mr. Miho: Just a moment, please. I'd like to object to any conclusions on the part of this witness unless he himself has seen that. I ask that the answer be stricken.

The Court: Yes. What somebody else found, unless it is within your knowledge, isn't for you to testify.

Q. Were you present when Mr. Shaffer found these six capsules?      A. Yes, sir.

Q. Were you there when he picked them up from the ground?

A. Yes, sir. I mean, he was in the house and he came out with me.

(Testimony of William K. Wells.)

Mr. Hoddick: I move that it is a matter within the [11] witness' own knowledge and it is not hearsay, and he can testify to what Mr. Shaffer——

Q. Describe how Mr. Shaffer came in possession of the six capsules, if you saw that happen?

Mr. Miho: If your Honor please, that would be purely hearsay as to what Shaffer said or did.

The Court: Part of the prior answer, that he said somebody found something, may go out.

Mr. Hoddick: "Found" is a conclusion, and that properly should be stricken.

The Court: All you, Mr. Wells, can testify to is what you know of your own knowledge and not what someone told you. Start again.

Q. Now, Mr. Wells, you said Mr. Abbey called you outside and showed you the top of a Vicks inhaler tube with two capsules containing some white substance adhered to it?

A. He put it back on the ground where he had found it. I picked it up and examined it closely. I saw two capsules stuck to it.

Q. Now, Mr. Shaffer also had six capsules?

A. Then it was given to Mr. Abbey, and Shaffer said, "Well, look what's here." So I turned around and saw him pick up six capsules from the ground, and Mr. Shaffer also said, "Well, here's some shattered pieces of inhaler tube." And he picked it up. And I took Mr. Cavness back into the [12] house and we proceeded to search the premises, and every room that we searched we had Mr. Cavness with us.



(Testimony of William K. Wells.)

Q. And was anything found in the house?

A. Well, there were some—I didn't see—Mr. Marcotte found 29 capsules of——

Mr. Miho: Oh, your Honor please, I move that that answer be stricken. It is just as bad for him to say that—he is an old-timer; he knows what it is all about. Let's not slip any evidence by innuendos.

The Court: That may go out. The jury is instructed to disregard it.

Q. (By Mr. Hoddick): Mr. Wells, did you assign certain officers to search the interior of the house?

A. We all searched the interior of the house. I instructed them to be sure to have Mr. Cavness present.

Q. Now, did any of these officers deliver anything to you?      A. At the Police Station.

Q. I believe you brought with you an envelope containing the various articles which were picked up at Mr. Cavness' house.      A. Yes, sir.

Q. Do you have that envelope with you? (Witness points to an envelope on counsel table.) Would you open that, [13] Mr. Wells, and identify each of those articles as to the source from which you obtained it?

Mr. Miho: Your Honor, I'd like to object to that on the ground that no proper foundation has been made to introduce anything along this line. A search warrant merely says about searching something included in there. Unless more proper



(Testimony of William K. Wells.)

foundation is laid, I believe it is objectionable for Counsel to introduce anything at this time.

Mr. Hoddick: We are not endeavoring to introduce this evidence at this time. We are merely endeavoring to lay a foundation so that it will be proper to have it admitted.

The Court: I know of no evidence that is being offered.

Q. (By Mr. Hoddick): Now, you stated that Mr. Abbey—— A. Yes, sir.

Q. ——had picked up an inhaler tube to which two capsules were stuck? A. Yes, sir.

Q. Or part of an inhaler tube? Do you have that article with you?

A. Yes, sir. (Witness opens an envelope.)

Q. You might leave it in the envelope. Did you leave that—where was this article delivered to you?

A. Down the vice squad in the Honolulu Police Department. [14]

Q. At the vice squad office? A. Yes, sir.

Q. And is it still in the same condition as it was when you received it?

Mr. Miho: If your Honor please, I object to that. There is no proper foundation laid that he would know, unless he can follow it up step by step. How does he know unless he put it in something, some definite container, or some receptacle? But just to say that he received it and for him to come to the same conclusion that it is in the same condition as he found it——

(Testimony of William K. Wells.)

Mr. Hoddick: I will withdraw that question.

Q. Mr. Wells, has that article been out of your possession since you received it? A. Yes, sir.

Q. And I am referring now to the part of the Vicks inhaler tube with the two capsules stuck thereto. A. Yes, sir.

Q. Did you deliver it to somebody else's possession?

A. On July 22, 1949, I delivered the two capsules that stuck to the piece of the inhaler tube and the six capsules to Mr. G. J. Carr, U. S. Customs chemist.

Q. Did you detach the two capsules from the piece of Vicks inhaler tube? A. No, sir. [15]

Q. When you received these two capsules and the part of Vicks inhaler tube from Mr. Abbey, did you put it in an envelope? A. Yes, sir.

Q. Did you put your initials on that envelope?

A. Yes, sir.

Q. Is it the same envelope in which the top is now contained with the two capsules?

A. Yes, sir.

Mr. Miho: Your Honor please, I still object to that answer and move it be stricken unless he can show that he followed the envelope from the time the envelope was out of his possession. The fact that it is in the same envelope means nothing, your Honor.

Mr. Hoddick: If you will just permit me to go ahead a few minutes, Mr. Miho, I think we can clear this up.

(Testimony of William K. Wells.)

The Court: Wait a minute. Read the question and answer.

(The reporter read the last question and answer.)

The Court: There is a missing link. As I get it, he received something at the Police Station and put it in an envelope, and at a later date turned it over to a chemist.

Mr. Hoddick: We will put on the chemist later and show that the contents are the same at the time that Mr. Wells delivered it to him, that they were the same. I want to recall Mr. Wells after the chemist to show that there was [16] no further change; as long as he had possession of these articles, they remained in a constant form.

The Court: What did he get back from the chemist?

Mr. Hoddick: That we will show by putting the chemist on, that it was the same thing that he gave to the chemist. But as far as he is concerned, the articles contained in that envelope had not been changed by him or by anybody else as long as he had those articles in his possession. That is our offer here. It is not time yet to offer these articles in evidence. I have to show the full groundwork, and we intend to do so.

The Court: Well, it is confusing to me as to just what you are doing, whether the witness is being asked to testify as to what happened to these

(Testimony of William K. Wells.)

things while in his possession, if anything, or whether you are trying to follow it through to the chemist and back to Mr. Wells. I don't know.

Mr. Hoddick: Just while they were in his possession, what he did with them and what he did with them after these articles were returned.

The Court: All right. Clear that up.

Q. (By Mr. Hoddick): Now, you stated you put the two capsules which were stuck to the top of the Vicks inhaler tube in an envelope, that you put your initials on that envelope, and that you delivered that envelope with the contents to Mr. Carr, the [17] Customs chemist? A. Yes, sir.

Q. Now, while those two capsules and the top of the Vicks inhaler tube were in your possession before delivery to Mr. Carr, did you make any change in them? Did you take them apart or did you alter the contents of the capsules?

A. No, sir.

Q. In other words, you delivered those articles to Mr. Carr in the same condition in which you received them from Mr. Abbey? A. Yes, sir.

Q. Now, is that envelope that you have up there beside you on the stand, or is that envelope the same one in which you put the two capsules and the Vicks inhaler tube originally?

A. Including the six capsules.

Mr. Miho: Your Honor please, I object to that. There is nothing about six capsules. All he can testify to is to what he actually delivered so far

(Testimony of William K. Wells.)

as the envelope is concerned, what was placed in it, and what he received back. As to his conclusions as to what was in it, whether it is the same or not, is certainly his opinion or conclusion.

The Court: Mr. Wells, with respect to this envelope into which you testified you put two capsules and the top of a Vicks inhaler tube——

The Witness: And six capsules. [18]

The Court: ——you also put something else in that envelope?

The Witness: Yes, sir, six capsules.

The Court: Well, you keep jumping around. It is hard to follow you, to follow it through. It is a little confusing to us who don't know anything about it. It is probably as clear as crystal to you, but you have got to make it clear to us. Let's go back to the time you said you got something at the Police Station. I recall you saying that you received the two capsules attached to the top of a Vicks inhaler tube at the Police Station.

The Witness: Yes, sir.

The Court: And was it there that you also received something else?

The Witness: Yes, sir, six capsules of suspected cocaine. I placed the six capsules and the two capsules in this envelope.

Q. (By Mr. Hoddick): Was that at the Police Station or the vice squad office?

A. Vice squad office in the Honolulu Police Station. And I further received other evidence down at the Honolulu Police Station.

(Testimony of William K. Wells.)

The Court: Let's not jump around. Let's stick to what we are being asked about. [19]

Q. Now, Mr. Wells, is that envelope the envelope in which you placed the six capsules and the top of the Vicks inhaler tube with the two capsules stuck thereto? A. Yes, sir.

Q. Did you put anything else in that envelope?

A. No, sir.

Q. And you later delivered that envelope to Mr. Carr?

A. Yes, sir, on July 22, 1949. And I received it back——

Q. Wait a minute. At the time you delivered that envelope to Mr. Carr, were the contents in the same condition as far as any changing on your part or as they were when you received them down at the vice squad office?

Mr. Miho: Your Honor, I object to that. It is merely his conclusion. He cannot testify as to something in an envelope. All he can testify is to what he put in there and describe those objects. But for Counsel to ask him what the contents of those things that he has already placed in an envelope, unless he can see through the envelope, it is merely asking for a conclusion from the witness.

Q. (By Mr. Hoddick): Mr. Wells, did you seal the envelope after you put the articles in it?

A. Yes, sir.

Q. And what did you do with the envelope during the [20] time it was in your possession?



(Testimony of William K. Wells.)

A. I placed it in another big envelope and—an evidence envelope put out by the Bureau of Narcotics—and I sealed it and put it in the strong room of my office. And on July 22, 1949, I broke the seal of the original envelope, took this envelope with the two capsules of cocaine and six capsules to Mr. Carr, the chemist, for analysis. He returned the envelope to me on July 25, 1949, sealed.

Q. And this is the first time you have opened that envelope since it was returned?

A. That's right, sir.

Q. Does anybody else have access to what you described as a strong room?

A. Strong room. No, sir.

Q. At your office? A. No, sir.

Q. And you did not in any manner tamper with it, change the contents?

Mr. Miho: Just a moment.

The Court: Wait a minute. Let him finish his question. Then object.

Mr. Miho: I'm sorry.

Q. (By Mr. Hoddick): Mr. Wells, did you at any time change the contents of these capsules during the time that they were in your [21] possession, from the time you received them at the vice squad until the time that you took them down to Mr. Carr? A. No, sir.

Q. You delivered those to Mr. Carr on July 22?

A. Yes, sir.

Q. And did Mr. Carr return that envelope to you at a later date?



(Testimony of William K. Wells.)

A. He returned the same envelope to me on July 25, 1949.

Q. How do you know that it is the same envelope?

A. I have my initials on it, W. K. W.

Q. And the envelope was sealed when he returned it?

A. Yes. It was sealed by Mr. Carr.

Q. And what did you do with the envelope?

A. I placed it in another evidence envelope, sealed it, and placed it in my strong room.

Q. And when did you next move it?

A. This morning before I came up to the Court here.

Q. And this was the first time you had broken the seal that Mr. Carr—this is the first time you had broken the seal from that envelope since you received it from Mr. Carr?

A. Yes, sir.

Q. And what were the contents, what are the contents now?

A. By that you want me to—— [22]

Q. It is still sealed?

A. I started to rip it.

Q. I believe it is sealed. That is all right.

The Court: Let the record show that originally when you first spoke to the witness about the envelope, I got the impression you wanted him to open it, and he started to tear it open and tore just a corner and was stopped. I think there was

(Testimony of William K. Wells.)

an objection at that time. So it is quite clear that that is what has happened here in open court. So the envelope is not now sealed. It has a torn corner which happened right here. Go ahead.

Mr. Hoddick: Will you give me that envelope please, Mr. Wells. I would like to have this marked for identification purposes.

The Court: It may be marked for identification.

The Clerk: United States "A" for identification.

(The envelope referred to was marked "U. S. Exhibit A for Identification.")

Q. (By Mr. Hoddick): Now, Mr. Wells, what else was delivered to you by these searching officers down at 3811 Leahi Avenue on July 19, 1949, besides the six capsules and the top of the inhaler tube, the two capsules stuck thereto?

A. I didn't receive any of the evidence out there. I received it from the vice squad office. [23]

Q. What did you receive at the vice squad office?

A. From Mr. Hugh Whitford I received part of the Vicks inhaler tube, and from Mr. Paul Shaffer——

Q. Now, what did you do with that part of the Vicks inhaler tube that you received?

A. I placed it in an envelope.

Q. In a separate envelope?

A. In a separate envelope.

(Testimony of William K. Wells.)

Q. And did you put your initials on that envelope? A. Yes, sir.

Q. Did you seal that envelope?

A. I sealed it with one of those——

The Court: Stickers?

The Witness: Stickers.

The Court: Labels?

The Witness: Labels, whatever you call it.

Q. And did you put that in your strong box?

A. I placed it in the original envelope and placed it in my strong room.

Q. And have you delivered that to anybody else, or has it been out of your possession since the time you received it?

A. No, sir. It's been in my possession all the time.

Q. And it's been in your strong room until you brought it into the court here today? [24]

A. Yes, sir.

Mr. Hoddick: I'd like to have that marked for identification purposes, your Honor.

The Court: It may be marked for identification.

The Clerk: U. S. "B" for identification.

(The envelope referred to was marked  
"U. S. Exhibit B for Identification.")

Q. (By Mr. Hoddick): Now, what else was delivered to you by the searching officers on July 19, 1949?

(Testimony of William K. Wells.)

A. Also received four shattered pieces of Vicks inhaler tube from officer Paul Shaffer.

Q. And what did you do with those pieces?

A. I placed it—no, he placed it in an envelope himself.

Q. In your presence?

A. In my presence. And sealed it and handed it to me.

Q. And you put your initials on it?

A. Yes, sir.

Q. Did he put his initials on it?

A. Yes, sir.

Q. In your presence?           A. In my presence.

Q. And what did you do with that envelope?

A. I placed it in the gummed evidence envelope. [25]

Mr. Miho: What was that?

The Witness: Placed it in a Bureau of Narcotics evidence envelope, one of these big ones here.

Q. (By Mr. Hoddick): And then where did you put it?           A. Put it in my strong room.

Q. And has that been removed from your strong room from the time you put it there until this morning?           A. Until this morning.

Q. Therefore the contents of that envelope are the same as when Mr. Shaffer placed the parts of the inhaler tube in it?           A. Yes, sir.

Mr. Hoddick: May we have that marked for identification, your Honor.

(Testimony of William K. Wells.)

The Court: It may be marked for identification purposes as——

The Clerk: U. S. "C" for identification.

(The envelope referred to was marked  
"U. S. Exhibit C for Identification.")

Q. Now, what other articles were delivered to you and by whom and where?

A. Abbey, a small piece of Vicks inhaler tube.

Q. This is another piece? This is a piece different from the one to which the two capsules were stuck? [26]

A. That's right.

Q. And where did he deliver it to you?

A. At the vice squad office of the Honolulu Police Department.

Q. And that was on July 19, 1949?

A. Yes, sir.

Q. And what did you do with them?

A. I placed it in an envelope.

Q. And the envelope was sealed?

A. With a label.

Q. Did you put your initials on the envelope?

A. Yes, sir.

Q. Are they there? (Showing an envelope.)

A. Yes, sir.

Q. And did officer Abbey put his initials on the envelope in your presence? A. No, sir.

Q. What did you do with the envelope?

A. I placed it in a big Bureau of Narcotics evidence envelope and placed it in my strong room.

(Testimony of William K. Wells.)

Q. And did you leave it there until you brought it down to the courtroom today?

A. Yes, sir.

Q. You have never opened this envelope since the time that you put— [27]

A. No, sir.

Q. —that you put the inhaler tube in it?

A. No, sir.

Mr. Hoddick: I'd like to offer this, to have this marked for identification purposes.

The Court: It may be marked.

The Clerk: U. S. "D" for identification.

(The envelope referred to was marked  
"U. S. Exhibit D for Identification.")

Q. (By Mr. Hoddick): Mr. Wells, did you receive any other articles from the searching officers on that day?

A. Yes, sir, from officer Harry Pestano I received a Vicks inhaler tube with the inside broken off, only the base remaining.

Q. And where did he deliver that to you?

A. At the vice squad office of the Honolulu Police Department.

Q. And did you put that in an envelope?

A. Yes, sir.

Q. Did you seal the envelope?

A. Put a label on it.

Q. Put your initials on the envelope?

A. Yes, sir.

Q. Is that the envelope that you put—(Showing an [28] envelope to the witness).

(Testimony of William K. Wells.)

A. Yes, sir.

Q. —that you put the tube found by Pestano in? A. Yes, sir.

Q. And what did you do with it after you left the vice squad office?

A. I took it up to the office of the Bureau of Narcotics, left it there and the following morning I placed it in this envelope and put it in an evidence envelope and placed it in the strong room of my office.

Q. And when did you first remove it from the strong room in your office?

A. This morning.

Mr. Hoddick: I'd like to have that marked for identification purposes also, your Honor.

The Court: It may be marked, it may be marked for identification as—

The Clerk: U. S. "E" for identification.

(The envelope referred to was marked "U. S. Exhibit E for Identification.")

Q. Was there anything else delivered to you?

A. By officer Roger Marcotte, a box containing 29 capsules, containing 29 empty gelatine capsules, No. 5.

Q. What do you mean "No. 5"?

A. Well, capsules have different numbers, No. 5, No. [29] 4, No. 3. No. 5 are the small ones.

Q. The number is indicative of their size?

A. Yes, sir.



(Testimony of William K. Wells.)

Q. And what did you do with these gelatine capsules?      A. I just put a label around it.

Q. You sealed the box shut?      A. Yes.

Q. And then what did you do with them?

A. I placed it in a gummed evidence envelope, and put it in the strong room, in the strong box and placed it in the strong room.

Q. And did you take them out of the strong room prior to this morning?

A. I took the second envelope that I placed all the evidence in from my strong room this morning and brought it up to court.

The Court: Second envelope?

The Witness: Yes, your Honor. This is the first envelope. On July 22nd I broke the seal and took the two capsules that are stuck to the piece of the inhaler tube and the six capsules——

The Court: To the chemist?

The Witness: ——to the chemist, yes, sir.

The Court: That is——

The Witness: That is the original envelope. [30]

The Court: Has this been marked for identification?

Mr. Hoddick: That is not marked for identification purposes.

The Court: Then these other things that you have been talking about were in a separate evidence envelope?

The Witness: In this one. (Indicating.)

The Court: That's the big one, the big envelope that you tore open here today?

(Testimony of William K. Wells.)

The Witness: Yes, sir.

Q. (By Mr. Hoddick): Then the contents of that box are the same, Mr. Wells, as at the time when you received them, received the box from officer Marcotte? A. Yes, sir.

Mr. Hoddick: I'd like to have the box marked for identification purposes.

The Court: It may be marked for identification.

The Clerk: U. S. Exhibit "F."

(The box referred to was marked "U. S. Exhibit F for Identification.")

Q. Now, Mr. Wells, all of these articles which you received from the searching officers on July 19th, you put in six different envelopes, small envelopes, is that right? Well, if you don't remember——

A. I think it's five. [31]

Q. You put them in a number of small envelopes?

A. This includes the sixth. (Indicating.) Five small envelopes.

Mr. Miho: If your Honor please, I don't like to interrupt too often but I believe Counsel should be instructed not to lead and just about put the answer in the witness' mouth.

The Court: Yes, that is true.

Q. (By Mr. Hoddick): Did you at any time, Mr. Wells, after receiving these articles from the

(Testimony of William K. Wells.)

searching officers place them in a single envelope?

A. Yes, sir.

Q. And was it ever necessary for you to take any of these articles from that single envelope?

A. Yes, sir.

Q. And when was that?

A. July 22nd, 1949.

Q. And what articles did you take from the single envelope?

A. I took the envelope containing the two capsules that were stuck to a piece of the inhaler tube and six small capsules to Mr. Carr, the Customs chemist, for analysis.

Q. And what did you do with the remaining envelopes that were in this single large envelope?

A. I placed the other articles in the original envelope until July 25, 1949, when I received the big envelope containing the capsules of cocaine and placed them——

Mr. Miho: If your Honor please, I move that all reference to cocaine and narcotics be stricken and the jury be instructed to disregard it.

The Court: That may go out. The jury is to disregard it. We are just tracing packages now.

A. (Continuing): And placed them in the second Bureau of Narcotics, Bureau evidence envelope.

Q. What did you place in the second Bureau of Narcotics envelope, evidence envelope?

A. I placed an envelope containing two cap-

(Testimony of William K. Wells.)

sules that were stuck to a piece of shattered Vicks inhaler tube, six capsules, and one envelope containing four shattered pieces of Vicks inhaler tube, one envelope containing one piece of shattered inhaler tube, one envelope containing the lower part of a Vicks inhaler tube, and another envelope containing an inhaler tube with the inside broken off, just the base remaining.

Q. In that second envelope, did you put any articles in that second envelope which you received from the officer——

A. A box containing 29 capsules of——

Q. Did you have any conversations with the Defendant, Mr. Wells, concerning the articles which you found on his [33] premises or which were found?      A. I did.

Q. What did he have to say to you? First of all, where did this conversation take place?

A. This conversation took place in Mr. Whitford's office down in the vice squad. I warned Mr. Cavness of his Constitutional rights and told him he didn't have to answer any questions that were put to him. I told him at the time that I am going to question him in regard to the capsules and other evidence that was seized from his premises. He told me that he didn't want to answer any questions. I then stopped and asked him, Mr. Cavness, about the evidence that we had seized from his premises, and I asked him if he would be willing to answer questions in regard to where

(Testimony of William K. Wells.)

he was born, and so forth, and he very willingly answered those questions.

Q. Did you say, Mr. Wells, that you had a search warrant for the purpose of making this search?      A. Yes, sir.

Q. And from whom did you obtain that search warrant?      A. From Judge Harry Steiner.

Q. And what is his Federal capacity?

A. He is a U. S. Commissioner.

Q. And is this the search warrant which he issued? (Showing a document to the witness.)

A. That is the original of the search warrant that Judge Steiner issued.

Mr. Hoddick: Your Honor, I am not certain whether it constitutes a part of the record of the case without being admitted in evidence or not. It is in the official Court files.

Mr. Miho: I can't hear you.

Mr. Hoddick: I am not certain whether this constitutes a part of the record of this case. It is in the official Court file. Will you stipulate to it being admitted in evidence?

Mr. Miho: I'm sorry, Mr. Hoddick, that is the basis of a lot of our contentions and I cannot stipulate to that. I believe that any search warrant is absolutely worthless unless it is proven to be legal.

Mr. Hoddick: But the warrant itself is an official document and should speak for itself.

Mr. Miho: I know of no such rule of law, your

(Testimony of William K. Wells.)

Honor, that states that a piece of paper, just because it is signed by someone reported to be a Commissioner, that it is on its face recognized to be legal evidence in court.

Mr. Hoddick: The Commissioner, as I understand it, makes an official return to this Court of all warrants issued. They are then put in a file and subsequently tied in with any case that may arise therefrom. [35]

The Court: Whatever is in that file in this case is part of the record in this case.

Mr. Miho: I note an exception to your Honor's ruling.

The Court: There is nothing to except to. It is already in the file. For whatever value it is, is another question. I take it, Mr. Wells, that it was under this search warrant that you operated?

The Witness: Yes, sir.

Mr. Hoddick: I have no further questions to ask this witness.

The Court: Cross-examination?

Mr. Miho: May we have a short recess, if your Honor please? It has been an hour since we started.

The Court: All right. We will take a short recess.

(A short recess was taken at 2:15 p.m.)



(Testimony of William K. Wells.)

After Recess

The Court: Cross-examination.

Cross-Examination

By Mr. Miho:

Q. Mr. Wells, you have been a narcotics agent here in the Territory for some years, is that right, since 1938? A. I came back in 1927.

Q. You got some special training before you took the job as narcotics agent?

A. As a narcotics agent, no, sir. We didn't have [36] any training when I first went in.

Q. How far did you go to school, Mr. Wells?

A. Eighth grade.

Q. Well, did you have any chemistry courses in the eighth grade or in grammar school?

A. No, sir.

Q. Did you ever take any chemistry course?

A. No, sir.

Q. So whatever knowledge you have, as you stated to Mr. Hoddick that you have, is knowledge derived from your work as a narcotics agent?

A. Yes, sir.

Q. And whatever conclusions you draw is guess work on your part, is that right, purely guess work?

A. On testing and from instructions from my Bureau how to test morphine and heroin.

Q. On instructions? A. Yes, sir.

Q. So that when you stated a while ago that



(Testimony of William K. Wells.)

you can tell what the different types of drugs are from looking at them, and in some cases by testing it, excepting fine powdered narcotics, that is all subject to chemist, absolute chemical analysis, isn't that right?      A. That's right.

Q. And what you may say by looking at some object [37] which you may think is this or that is purely guess work, is that right?

A. That's right, sir.

Q. That is the extent of your knowledge of drugs, isn't that correct?      A. Yes.

Q. I presume you prepared, or your office prepared, or you know who prepared what appears to be in the Court files as a search warrant, United States of America versus Orestus Cavness.

A. Yes, sir.

Q. Did you prepare it yourself?

A. I prepared that myself, yes, sir.

Q. You typed it out yourself?

A. I wrote it in longhand and had my clerk in the office—she typed it out.

Q. What is the name of your clerk?

A. Mrs. Harriet N. Ho.

Q. This search warrant mentions a person by the name of Gerry Wilson.      A. Yes, sir.

Q. You, I presume, met and talked to this person, Gerry Wilson?      A. I have.

Q. And if you were instructed to produce her in Court [38] you will be able to do so?

A. No, sir.

(Testimony of William K. Wells.)

Q. And why is that, Mr. Wells?

A. Because the informer is not in the Territory of Hawaii.

Q. This Gerry Wilson is your informer?

A. It is a police informer.

Q. And how do you know that this important witness is not in the Territory of Hawaii?

A. I happened to be down in the airport when the informer left for the states.

Q. And when did he or she leave?

A. I think——

Q. Soon after this?

A. Approximately about a month after this happened.

Q. You talked to this Gerry Wilson during that one month's period between the time of the signing of this search warrant or talked to her about the search warrant, between that time and the time she left?

A. I think I talked to her on one occasion.

Q. And when was that, Mr. Wells?

A. Oh, about a couple of weeks after that.

Q. And when was it that you talked to her prior to that couple of weeks?

A. Around the latter part of June, I think, that I [39] first talked to her in the presence of two other police officers.

Q. And who were they?

A. Sergeant Alfred Sousa and Theodore Kinney.

(Testimony of William K. Wells.)

Q. And that was the only time you talked to her prior to two weeks or so after the arrest?

A. Only once I talked to her, after the arrest. I thought your question was, when was the first time I talked to her prior to the arrest?

Q. I may have confused you. When was the first time you met Gerry Wilson in your life?

A. About the latter part of June, 1946. I met the informer through police officer Alfred Sousa.

Q. When was the second time you met her?

A. That was the time I met the informer through Alfred Sousa and Theodore Kinney.

Q. In 1946? A. Yes, sir, 1949.

Q. And that was in the latter part of June, 1949? A. Yes, sir.

Q. That you had met this informer, Gerry Wilson? A. Yes, sir.

Q. Did she go by any other name or names?

Mr. Hoddick: I object, your Honor, as to what other names the informer might have gone by. It is entirely [40] immaterial in this case. I think the police are entitled to preserve, if possible, the identity of their informers. As a matter of fact, the name of Gerry Wilson does appear apparently on the search warrant. It was not possible—I would have objected originally to the introduction of the name of the informer. I think any information concerning other names has no bearing on this case.

The Court: What is the relevancy of the identity of the person?

(Testimony of William K. Wells.)

Mr. Miho: I'd like to attack—not attack but establish the legality of the search warrant, if your Honor please, and it is very important to my case to find out all we can about the things that she swore to before the U. S. Commissioner. Certainly her identity, if any, is important. How else can I attack, delve into the credibility of this person as to the truth or veracity of her statement, which is the basis of this search warrant, unless I can at least establish her identity, your Honor?

Mr. Hoddick: I don't think this is a proper time to make an attack on the search warrant itself, your Honor.

The Court: No, I don't think so either.

Mr. Hoddick: It should have been before we went into trial.

Mr. Miho: I believe it is covered by a motion for suppression of evidence. [41]

The Court: We will take that up separately at the proper time. But we are not presently concerned with the validity of that search warrant. The witness testified that pursuant to this search warrant certain things were done under that. Now, if the time comes when the officer who obtained that, when the evidence comes in, we will take up your motion squarely. But at this moment I can't see it.

Mr. Miho: May we have an exception?

The Court: Yes.

(Testimony of William K. Wells.)

Q. (By Mr. Miho): Mr. Wells, so that the only time you talked to Gerry Wilson, as you called her, your informer, was in the latter part of June?

A. I met her——

Q. Prior to the arrest?

A. ——prior to the arrest. I met her on several occasions.

Q. Well, I may have misheard you. Prior to the arrest, July 19, 1949, of this Defendant Cavness, on the strength of this search warrant, how many times had you talked to Gerry Wilson?

A. I would say about a half dozen times, maybe eight. I am not quite sure how many times.

Q. During a course of how many weeks, Mr. Wells? A. About three weeks. [42]

Q. About three weeks? Now, you have been after, trying to get something on a man named Orestus Cavness for some time, is that right?

A. Yes, sir.

Q. For how long?

A. Since October 8, 1948.

Q. And these eight or seven conversations you had with this Gerry Wilson were for the purpose of gathering information sufficient for you to get a search warrant out against the Defendant Cavness? A. Yes, sir.

Q. And solely for that purpose, is that right?

A. On this occasion, yes, sir.

Q. Now, when was the last time you talked to Gerry Wilson prior to the arrest?

(Testimony of William K. Wells.)

A. I think it was on July 12, 1949.

Q. Before Judge Harry Steiner?

A. Yes, sir.

Q. And you accompanied Gerry Wilson yourself to Judge Steiner's office?

A. No, sir. Judge Steiner came to my office.

Q. I see. And that is in the Federal Building here?

A. No, sir, it is at room 575 Alexander Young Building.

Q. I'm sorry. And Judge Steiner stepped into your office over there with, at your request? [43]

A. Yes, sir.

Q. And Gerry Wilson was present in your office?  
A. Yes, sir.

Q. Had you given Judge Steiner the original of this search warrant for the arrest of Cavness prior to the time the Judge showed up in your office?

A. I don't understand that question, Mr. Miho.

Q. Had you shown Judge Steiner this search warrant that you say you prepared prior to the time Judge Steiner stepped in your office?

A. No, sir. I showed it to him on July 12, 1949, when he came up to my office. I prepared the original and a copy of the search warrant.

Q. The search warrant had already been typed out and prepared before he came in, is that right?

A. That's right.

Q. And Gerry Wilson was present in your office with you?  
A. Yes, sir.



(Testimony of William K. Wells.)

Q. Who else was present in your office?

A. Sergeant Alfred Sousa.

Q. And who else? A. That's all.

Q. And was Sergeant Sousa present throughout the time that Judge Steiner came into your chambers? [44]

A. Yes, sir.

Q. From the beginning to the end?

A. Yes, sir.

Q. Did you have any stenographic reporters or anyone else there? A. No, sir.

Q. So that you, Judge Steiner, Officer Sousa——

A. Yes, sir.

Q. ——and Gerry Wilson were the only parties present? A. Yes, sir.

Q. And what time of the day was it that Judge Steiner came in?

A. He was supposed to be there at two o'clock and he came about, he was about five, ten minutes late.

Q. And he stayed in your office how many minutes?

A. I would say he stayed about half hour.

Q. Half an hour? A. About that.

Q. July 12th was on a Tuesday, do you recall that? A. No, sir, I don't.

Q. Do you know whether he had court that day or not? A. I really don't know.

Q. Well, I will inform you that July 12th was a Tuesday. Can you recall whether he had court that day or not?



(Testimony of William K. Wells.)

Mr. Hoddick: We will so stipulate. [45]

The Court: What, that the date is correct or that he had court on that day?

Mr. Hoddick: No, that July 12th is Tuesday.

The Court: All right.

Q. (By Mr. Miho): Now, you came in a few minutes after two o'clock?

A. To the best of my knowledge he came in after two o'clock.

Q. And he stayed in your office half hour, you think?

A. Approximately half hour or 20 minutes.

Q. What was said when he came into your office?

Mr. Hoddick: May it please the Court, I object to this general line of questioning. I don't think this is the proper time or place to try the validity of the search warrant or endeavor to establish its invalidity. I believe that there is a certain presumption of validity that goes with a search warrant. And knowing of the issuance of this search warrant—I am not speaking now as to whether the search was properly made pursuant to that warrant or not, but if an attack were to be made on the warrant it should have been made prior to the time we went to trial. And therefore I think this entire line of questioning is immaterial and not proper cross-examination.

The Court: What are you trying to do?

Mr. Miho: Certainly, your Honor, the back-

(Testimony of William K. Wells.)

ground of the [46] search warrant has a lot to do with the entire case in the sense that it is to show, let's say, for one thing the motive, if any, of Mr. Wells, the zealousness with which he went out to get the search warrant, or how he got it. It certainly has a material bearing on his credibility as a witness and the principal witness in this case for the Government.

The Court: Well, that is all right, but if you are going to attack the validity of the search warrant, the search warrant, you will have to do that separately. It is not part of this case except that the Court will hear motions. You may go ahead on the theory that you state you wish to proceed.

Q. (By Mr. Miho): Now, I presume you introduced Gerry Wilson to Judge Steiner.

A. Yes, sir.

Q. And who did the questioning, you or Judge Steiner, of Gerry Wilson?

A. Judge Steiner.

Q. Did you know at that time that Gerry Wilson was going to leave the Territory soon?

A. No, sir.

Q. You are quite sure of that?

A. Yes, sir.

Q. Do you know whether she had been a long resident [47] of the Territory or a resident of the Territory or just visiting here or not?

A. I don't know.

Q. You don't know that? You didn't know it at that time either?

A. No, sir.

(Testimony of William K. Wells.)

Q. And Judge Steiner questioned Gerry Wilson?

A. Yes, sir.

Q. Of course Gerry Wilson knew that Judge Steiner was coming there?

A. Yes, sir.

Q. And for what purpose?

Mr. Hoddick: That calls for a conclusion on the part of the witness. He doesn't know what Gerry Wilson knew.

Mr. Miho: I will reframe the question.

Q. You had Gerry Wilson prepared for this interview, did you not?

A. Yes, sir.

Q. Evidently Gerry Wilson is a dope addict herself from this——

Mr. Hoddick: Objection. It is immaterial what Gerry Wilson is or was.

Mr. Miho: I will withdraw the question.

Q. Is she a negro person?

Mr. Hoddick: I object to that, too, on the grounds that [48] it is immaterial.

Mr. Miho: I will withdraw the question.

Q. How is it, Mr. Wells, that after eight or seven interviews in the course of three weeks you did not get a search warrant prior to the last, prior to July 12th, if you talked to her, Gerry Wilson, seven or eight times prior to July 12th, the day of the search warrant?

A. Yes, sir.

The Court: That is not in evidence. That is part of the record in the case but it is not an exhibit to be shown to the jury at this time.

Mr. Miho: All right.

Q. Did you answer the question?

(Testimony of William K. Wells.)

A. Yes, sir, I said.

Q. What is your answer?

A. In regards to not getting the search warrant prior to that?

Q. Yes, prior to that date.

A. I was making observations on the premises of Mr. Cavness, and when I was ready I had the informer make a purchase on a certain date so I can get a search warrant for Mr. Cavness on the premises.

Q. And were you present when such a purchase was made?      A. No, sir.

Q. Did you accompany her to the place? [49]

A. No, sir.

Q. Did you give her the amount of money or any kind of money for her to make such a kind of purchase?      A. No, sir.

Q. Do you recall when it was that such a purchase as she stated in the search warrant was made to you?      A. On July 10, 1949.

Q. And when did she inform you of that fact?

A. That same night.

Q. Do you know what she purchased, do you recall?      A. A capsule of cocaine.

Q. How many?      A. One.

Q. How much did she pay for it?

A. Ten dollars. That's a standard price.

Q. And when, how soon after she made such a purchase did you talk to her?

A. That night about—no, it was the following night I talked to her.

(Testimony of William K. Wells.)

Q. You didn't talk to her the day she made the purchase?

A. No, sir, Mr. Kinney talked to her.

Q. Sergeant Kinney? A. Yes, sir.

Q. You were there when Sergeant Kinney talked to her? A. No, sir. [50]

Q. Just you think that's what happened?

A. Just telling you what Mr. Kinney told me.

Q. When did Mr. Kinney tell you that he had talked to her—the same night?

A. When I got to the vice squad office that night about nine o'clock.

Q. That was July 10th? A. Yes, sir.

Q. And when did you prepare this search warrant?

A. I prepared that search warrant on the morning of the 12th.

Q. Why did you wait two days after the purchase? Weren't you very anxious to get hold of Cavness somehow?

A. I was busy on something else.

Q. Wasn't it important to get your search done as soon as the evidence is in?

A. No, sir. I got ten days.

Q. Well, you wasted two days. What if Cavness had flown away from the coop?

Mr. Hoddick: I object.

Mr. Miho: I will withdraw the question.

Q. Anyway, you waited until Tuesday?

A. Yes, sir.

(Testimony of William K. Wells.)

Q. And you didn't prepare this until Tuesday?

A. That's right. [51]

Q. And Gerry Wilson didn't read the search warrant until she came to your office just before Judge Steiner came into your office, or did she read it before?

A. Monday she came down to the office, Monday, and she gave me a little brief of what happened. I took it down in longhand. And then, when the informer came in about a little after 12:30 I had the informer read it, read the affidavit that she was going to sign, and she said that was correct.

Q. Where is that affidavit now, Mr. Wells?

A. It is in there (indicating file).

Q. This affidavit was signed on July 12th, wasn't it?      A. Yes, sir.

Q. Well, July 12th was a Tuesday, was it not?

A. That's when it was signed, yes.

Q. Well, didn't you say that she signed it on Monday?

A. No, sir, I had it down there on Monday and I took it down in longhand.

Q. And you prepared an affidavit?

A. Yes, sir.

Q. And she came in Tuesday to sign it just before Judge Steiner?

A. No, sir, she didn't sign it. She came in and read it.

Q. Read it Tuesday? [52]

A. Yes, sir, prior to Judge Steiner coming in,



(Testimony of William K. Wells.)

and then she signed the affidavit in the presence of Judge Steiner, when the Judge got through questioning her.

Q. There are no notes taken of interviews of that kind when Judge Steiner talks to anyone?

A. No, sir.

Q. Just an affidavit that you have here is filed in the record?

A. Yes, sir.

Q. And in addition to that, the Judge talks, too?

A. Questions her.

Q. He acts as a U. S. Commissioner, is that right?

A. Yes, sir.

Q. So that Gerry Wilson, so far as you know, talked to Judge Steiner only once?

A. Only once.

Q. That was for about 20 minutes to half hour?

A. I would say so.

Q. And was that 20 minutes to a half hour spent by the U. S. Commissioner Steiner and Gerry Wilson just for the purpose of this search warrant?

A. For your information, I had two other search warrants to be signed on that day, and the U. S. Commissioner was pretty busy for half an hour there reading and questioning her, the informer, with regard to the different affidavits [53] that she made.

Q. Didn't you tell me a few minutes ago that Judge Steiner talked to Gerry Wilson for 20 minutes to a half hour? Isn't that what you told me?

A. To the Commissioner, yes, sir.



(Testimony of William K. Wells.)

Q. Talked to Gerry Wilson for 20 minutes to a half hour?      A. Yes, sir.

Q. So that if he talked to you or anyone else about other search warrants, he was there for a longer time?

A. He talked to her in regards to the other two search warrants. She gave me an affidavit on it.

Q. For 20 minutes to a half hour?

A. Yes.

Q. Are you sure it was that long?

A. About that, yes, sir. After the informer left, the U. S. Commissioner sat there for about three, four minutes to talk about different subjects.

Q. So far as you know from your seven or eight conversations with Gerry Wilson, she had gone and made a visit, only one visit, to Cavness' home, is that right, so far as you know?

A. For the purchase of evidence for my office.

Q. Only one visit?

A. For me, yes, sir. [54]

Q. One capsule?

A. One capsule. But the informer——

Q. Now, Mr. Wells, you are in no position to produce Gerry Wilson at any time now, or are you familiar with where she may be today? You don't have to look at Mr. Hoddick.

Mr. Hoddick: I object to the question. Even if he were in a position to produce Gerry Wilson, there is no reason for producing her. He cannot be compelled to produce Gerry Wilson. Her evi-

(Testimony of William K. Wells.)

dence has no bearing on this case, the case in chief.

Mr. Miho: Well, I will withdraw the question and ask a different question, your Honor.

Q. Do you know where she is now?

A. No, sir.

Mr. Hoddick: I object to any question dealing with the present location of Gerry Wilson or whether the witness could produce her or whether she would come of her own accord or anything similar thereto.

The Court: There is no question before me at the moment.

Mr. Miho: If your Honor please——

The Court: There is no question pending before me at the moment.

Mr. Miho: Yes.

Q. Did you ever accompany Gerry Wilson down to the premises described in her affidavit to you by Gerry Wilson? [55]

A. No, sir.

Q. But you were interested in using her to get some evidence sufficient for a search warrant, is that right?

A. Yes, sir.

Q. Was she ever arrested or bothered in any way for having made such a purchase?

A. She was acting under my instructions.

Q. You promised immunity to her, then?

A. No, sir.

Q. But it is a fact that she made a purchase, you say, according to her affidavit?

A. Yes, sir.

Q. And from Orestus Cavness?

(Testimony of William K. Wells.)

A. Yes, sir.

Q. At this Houston Street address, is that right? Leahi Avenue, I'm sorry, 3811 Leahi Avenue.

A. Yes, sir.

Q. Are you sure there was no mistake in identity so far as this Defendant is concerned and so far as Gerry Wilson is concerned?

Mr. Hoddick: That calls for a conclusion on the part of the witness also.

Mr. Miho: I will reframe the question, your Honor.

Q. You never showed Gerry Wilson any photographs of Orestus Cavness, did you? [56]

A. No, sir.

Q. You never had any photographs of the Defendant Cavness, did you? A. No, sir.

Q. You never took Gerry Wilson down to Cavness' home, did you? A. No, sir.

Mr. Hoddick: May it please the Court—the question has been answered. Go ahead.

Q. (By Mr. Miho): You don't know how long, you didn't know how long she had lived in the Territory, is that right?

Mr. Hoddick: I object to this question and any other questions, Mr. Miho, that you may ask concerning Gerry Wilson. The only question involved in this case concerns eight capsules, according to the indictment, which in our opening statement was stated were found in the possession of the Defendant, Orestus Cavness. What purchases Gerry Wil-

(Testimony of William K. Wells.)

son may have made before, how many times she may have seen Mr. Cavness, or how many times she may have seen Mr. Wells, is entirely immaterial.

The Court: It seems to bear on the search warrant proposition.

Mr. Miho: Yes, I could take it up further at the time of the motion. I will proceed a little further on that angle, [57] your Honor.

Q. May I ask you this, Mr. Wells: So far as you are concerned, you believe thoroughly what this informer told you about Cavness?

A. Yes, sir.

Q. Now, is an informer paid for her services?

Mr. Hoddick: Objection. That is immaterial as to whether she is paid or not. It is also a matter which almost falls within the scope of privilege.

The Court: Well, regardless of that, we are not trying this case on the basis of any purchase made by this informer.

Mr. Miho: I will withdraw the question, your Honor. On the strength of this search warrant, so far as I know anyway, your Honor——

Mr. Hoddick: You are correct, your Honor.

Q. (By Mr. Miho): On the strength of this search warrant, you went with how many officers of the vice squad?

A. Captain H. Whitford, Sergeant A. Sousa, Richard Sasaki and Paul Shaffer, and Reserve Police Officer Abbey, and about a little before six

(Testimony of William K. Wells.)

we were joined by Officers F. Ferry, R. Marcotte and Harry Pestano.

Q. How many is that, Mr. Wells?

A. About eight, about nine of us.

Q. Had Mr. Cavness, the Defendant, been in any kind [58] of a pilikia so far as you know that may have made you think that he might cause a lot of trouble and cause a riot and have a lot of pilikia up there if you went by yourself with one or two witnesses?

A. The others accompanied us to search the premises outside. And it was getting a little dark and we wanted to search the premises before darkness occurred.

Q. Well, you had the search warrant, did you not?      A. Yes, sir.

Q. The search warrant authorized only you to search, did it not?

A. I asked the vice squad to come out to assist me.

Q. Did you deputize them as your assistants?

A. I didn't deputize them. I can't deputize them. I can call on them for assistance.

Q. But nothing is done so far as any authority granted by the search warrant is concerned without your immediate presence and supervising, is that right?      A. Yes, sir.

Q. That search warrant authorizes only you to search, is that correct?      A. That's right.

Q. And the building of the Defendant, is that right?

(Testimony of William K. Wells.)

Mr. Hoddick: I think the search warrant will speak for itself, your Honor. [59]

The Court: It does.

Mr. Miho: I will withdraw the question.

Q. What other motive did you have in bringing eight or nine officers together with you to make this search of the house? May I ask you this question before you answer: How large is the Defendant's premises, first the house?

A. You mean the yard?

Q. The house first.

A. The house—it has a living room, a bedroom and a kitchen, and I think you can call that a rear bedroom, too. They use it for a dining room.

Q. You remember this phrase, "One-story wooden frame building"? A. Yes.

Q. Just an ordinary plain, single-wall dwelling, isn't that true?

A. I don't recall if it is single wall or double wall.

Q. Well, it is a plain house, isn't that correct?

A. Pretty good-looking house.

Q. And how many square feet of yard, approximately?

A. I would say it is 50 by 60 or 65.

Q. Anything very complicated in the yard? Is the yard full of grass or is it a dirt yard?

A. It has grass.

Q. Nearly all of it is grass? [60]

A. Grass and shrubs.

Q. Just a few shrubs, isn't that right?



(Testimony of William K. Wells.)

A. Yes, sir.

Q. Nothing very complicated or thickly vegetated in the yard?      A. No, sir.

Q. Small, very plain yard?      A. Yes, sir.

Q. And when you came up to the premises you stationed the seven or eight officers in a house across Leahi Avenue?

A. No, sir. Whitford, Sousa, Sasaki, Shaffer and Abbey followed me out to the house. The others were at the Waikiki Fire Station.

Q. Followed you out of what house, the house across Leahi Avenue?

A. Yes, Mr. Abbey's house, which is directly across from Mr. Cavness' house.

Q. How long had you been at this house?

A. Since 2:40, about 2:40 p.m. on July 19th.

Q. And the other officers were waiting at the fire station about the same time?

A. About the same time.

Q. And you had prearranged methods of communication whereby they would follow your instructions?

A. We were to telephone after we served the warrant [61] on Mr. Cavness.

Q. You had the warrant in your possession?

A. Yes, sir.

Q. Now, when you went to this house across Leahi Avenue at 2:45 or thereabouts, with these four officers, did you or did you not know that Orestus Cavness, the Defendant, was in his home?

A. We saw his car there.



(Testimony of William K. Wells.)

Q. Did you see him in his home?

A. No, sir, I didn't see him until about five minutes to four, that is, 3:55 p.m., when he came out with a colored girl, and he walked to the mail box, looked in the mail box, and finding in the mail box—he closed it and went back into the yard. He talked to the girl. Then the girl left and walked towards, on Leahi toward the Koko Head side. He got into his car, a Hudson sedan, 85931, and backed out and proceeded Ewa on Leahi Avenue.

Q. Now, how far is this house across the street from Leahi Avenue where you were observing him? How far from where you are sitting?

A. From house to house?

Q. From (indicating)?

A. About a little further than that. I would say another 25 feet.

Q. About a hundred feet altogether? [62]

A. About, approximately, yes, sir (referring to the courtroom).

Q. Will you explain to us why it was that you had the search warrant, accompanied by four or five officers, and you went there at 2:45 and still did not serve the warrant on the Defendant immediately but waited and waited and waited for hours?

A. We just placed observations on his premises to see who was going there.

Q. You wanted to catch some more people?

A. No, sir, we were just watching his premises.

(Testimony of William K. Wells.)

Q. How many times, how long had you kept his house under observation? On how many occasions before that time?

A. Oh, I would say about half a dozen times.

Q. Since about October of last year?

A. Since, I would say, since the latter part of June of this year.

Q. How many would make such an observation besides yourself?

A. I was accompanied by Sergeant Sousa, Reserve Officer Mr. Abbey. He was with us on several occasions. Mr. Harry Pestano. And on several occasions I have done it by myself.

Q. You made a list of people who went in and all that, took notes of what went on on each occasion? [63]

Mr. Hoddick: I haven't entered any objection before, your Honor, but it seems to me that we are dealing with a particular time and a particular offense; and what the past history of observation was, watching and listing of people going in and out, is not material to this case.

Mr. Miho: If your Honor please, I think it is a material development which will be helpful to all concerned as to the background of this particular case and this particular defendant and his relationship to this, the entire duties there.

The Court: You may proceed.

Q. You made notes and it was your job and you were out there to get something on Mr. Cavness. You told us that, is that right?

(Testimony of William K. Wells.)

A. Yes. Well, on several occasions I couldn't be too close to his house. On several occasions we were in the back of his place, and he's got a dog there and we had to get out. We couldn't make a close observation of his premises.

Q. Because of the dog?

A. Dog and neighbors.

Q. It is because you didn't want to give your hand away, that is the only reason why, isn't that right?

A. I didn't want him to know that we were watching his premises.

Q. Not because of any particular dog? You have been taking care of houses where there have been many dogs watching [64] the premises, is that right?

A. Not his dog.

Q. But there have been other dogs? You are not afraid of dogs?

A. Oh, yes, I am afraid of dogs.

Q. So it was a dog that stopped you from close observation?

A. On two occasions, yes, sir, in the back.

Q. And then the last time you made an observation of Cavness' premises was when it was with relation to July 12, 1949; it was when with relation to July 12, 1949?

A. September 19, you said?

Q. July 19, 1949.

The Court: Wait a minute. You are both all mixed up. Stick to the one date. You started talking about July 12th.

(Testimony of William K. Wells.)

Mr. Miho: July 12th, your Honor. I'm sorry. Correct the record.

Q. July 12, 1949, the date you made this arrest? A. You mean after or before?

The Court: That wasn't the date the arrest was made. July 19th was the date.

Mr. Miho: Sorry. July 19, 1949.

A. I think the last time I made the observation of his premises was on a Sunday night, if I remember, a couple of nights before we made the arrest, or Monday night, no, [65] I am quite sure it was Sunday night.

Q. About how many arrests would you roughly estimate that you have made in your almost eleven years? A. Twenty-eight years.

Q. Is it 28 years as a narcotic agent?

A. Yes.

Q. Since 19——

A. 1921, November 21, 1921.

Q. About how many would you think you have made? A. I can't recall.

Q. It's been perhaps over a hundred?

A. More than that.

Q. Much more than that? A. Yes, sir.

Q. Would it be closer to a thousand?

A. It could be.

Q. Have you ever served a search warrant in all your 28 years of experience as a law enforcement narcotics agent accompanied by seven or eight men or officers?

(Testimony of William K. Wells.)

A. On numerous occasions.

Q. I mean serving a search warrant on one person?  
A. Yes, sir, I am quite sure.

Q. Do you recall? Tell me about it.

A. At the time I didn't know that Mr. Cavness was all alone in the house when he came back. [66]

Q. You knew that Cavness lived alone in the house, did you not, from your observations, six or seven observations prior to the time of the arrest?

A. Well, not from, well, from information.

Q. From your observations?

A. From my observation, yes, I have seen a lot of men and women go to his place and stay in there for quite some time.

Q. Like they do in your home and mine? Is it any more different than that?

A. Yes, but they don't stay in my home until two or three o'clock in the morning night after night.

Q. So as far as your information is concerned, he lived there alone?  
A. Yes, sir.

Q. When was this other time that you were accompanied by seven or eight men when you served a search warrant on a defendant?

A. Where?

Q. When was that? Whom was it on?

A. On July 16, 1949, on Winston Churchill Henry.

Q. And you were accompanied by how many men there?

(Testimony of William K. Wells.)

A. Oh, about the same amount of men. Same.

Q. And from the same court?

A. Yes, sir [67]

Q. And before then?

A. Before then? One time I think I was accompanied by at least 15 men, when we first raided the premises of Winston Churchill Henry.

Q. A barricaded place? A. Yes, sir.

Q. But outside of Henry, the celebrated Winston Churchill Henry, and Cavness here, when was it that you had as many as eight men accompanying you?

A. Well, years back we raided different opium dens around here and we were accompanied by Alcohol Tax Unit inspectors and police officers.

Q. But, Mr. Wells, isn't it about the only time, this occasion, about the only time when you have made an arrest, when you served a search warrant on a single individual living by himself in a home where you were accompanied by seven or eight officers, isn't that about the first time you have ever done that?

A. I don't think so. I don't recall when I have served search warrants accompanied by many police officers.

Q. But this is certainly one of your most rare occasions, isn't it?

A. No, sir, I wouldn't say rare occasions.

Q. Well, give us some others where you served a search warrant accompanied by seven or eight officers on a [68] single person living in a house



(Testimony of William K. Wells.)

by himself in your 28 years of experience? Give me one occasion? A. I don't recall.

Q. So that so far as you know, there has never been up to this point, there has never been a time like this, is that right? A. It could be.

Q. Now, when you went up to Mr. Cavness' place you didn't serve it because you said you were waiting to observe further, even after you saw him come out and look around the yard and look in the post office box and say goodbye to his friend, you still kept it in your house, is that right?

A. That's right.

Q. And you waited for about two more hours or three more hours? A. That's right.

Q. And during all that time you kept it under observation, you and your brother officers?

A. Yes, sir.

Q. Now, what made you come out from the house? A. Beg pardon?

Q. What made you come out of the house where you were watching?

A. I received information that when we raided the premises of Winston Churchill Henry on July 16, 1949—— [69]

Mr. Miho: I object to any self-serving declarations or any hearsay evidence coming at this point except as it relates to an answer to my particular question. What he may have heard as a result of other raids is certainly unresponsive question or answer.



(Testimony of William K. Wells.)

The Court: You asked him why at his point of observation he had a search warrant—he may answer the question. He may answer your question directly.

Mr. Miho: No, I asked him——

The Court: Why he left the house where he was watching to go across the street to serve the search warrant?

Mr. Miho: That's right, your Honor, and then he started to say that when he raided Winston Churchill Henry's place he heard——

The Court: That may go out and he may answer your question directly.

Mr. Miho: Thank you.

The Court: Meaning without any background to answer.

Mr. Hoddick: The background may constitute his reasons.

The Court: I don't know. Let him answer it directly without going around.

Q. (By Mr. Miho): You understand the question, Mr. Wells?      A. Yes, sir.

Q. Will you answer it, please? [70]

A. That Mr. Cavness didn't keep his plant there. By "plant" I mean his cocaine there and——

Mr. Miho: If your Honor please—just a moment, Mr. Wells—I move that that be stricken from the record and the Jury be instructed to disregard it, your Honor, please, as wholly conclusive, highly prejudicial to the Defendant, and he knows that. It is unresponsive.

(Testimony of William K. Wells.)

Mr. Hoddick: You asked a question "why," Mr. Miho. Mr. Wells is endeavoring to answer your question.

Mr. Miho: No relation to the question.

Mr. Hoddick: Mr. Wells is not testifying as to the truth of what he is stating, as to whether Mr. Cavness kept his plant there or not. He is merely stating that that is what he heard, why he did it. That doesn't constitute hearsay.

The Court: Well, the question is, to repeat, why, Mr. Wells, did you leave your point of observation to go across the street and serve your search warrant upon the Defendant? That is the question. Now, Mr. Miho wants to know what your reason was for doing that. Now you may give him your reason.

Mr. Miho: I may reframe that to help him. He may not understand my question.

The Court: Wait a minute. I want you to answer that question again. Your former partial answer is stricken and the Jury is instructed to disregard it. Make sure everybody [71] understands what the question is and what you are asked to answer. And talk plain English so we can understand what you are saying.

The Witness: Well, your Honor, I want to answer the question but I don't want to take advantage of Mr. Miho. And it is a——

The Court: He doesn't want you to either.

The Witness: No, sir. That is why it is a very difficult question to answer.

(Testimony of William K. Wells.)

Mr. Miho: I believe, your Honor, please, I understand his difficulty, and if I may be permitted perhaps I can get around it by not putting him in an embarrassing position to be able to take advantage of me, your Honor.

The Court: All right. You want to withdraw the question and reframe it?

Mr. Miho: Yes, I will withdraw it.

Q. Now, Mr. Wells, you were waiting to see if Cavness would sell something or hand something, some offer to someone, or receive something from some one, isn't that it, wasn't that your motive to watch the house? A. No, sir.

Q. You stated you were there for observation to get more evidence?

A. My reason was for him to leave the place.

Q. Then how could you serve a search warrant?

A. And when he came back, to serve the search warrant on him, because I have received prior information as to some of his activities.

Q. Mr. Wells, in fact your idea as you operate, as I understand you operate, is that you thought that if you waited long enough Cavness or someone in his position would go out, come back, put some evidence in his home; he wouldn't have time to hide it, or something, and then you'd go in and jump him and grab him, is that right? Wasn't that your motive for waiting patiently?

A. No, sir. My motive was to wait for him to leave the house and when he came back to serve the warrant on him.

(Testimony of William K. Wells.)

Q. And what would that accomplish?

A. Through certain information I have received.

Q. I see. So you wanted him to leave the house?

A. Yes, sir.

Q. You were waiting for him to leave the house?

A. Yes, sir.

Q. Without you knowing about it? And then you were going to wait for him until he came back and then serve the search warrant?

A. Yes, sir.

Q. For some particular reason, is that right?

A. Yes, sir.

Q. Then he came back a little later? [73]

A. Yes, sir.

Q. There was nothing to indicate anything unusual in his appearance or the manner of his driving or the manner of his dress or anything of that kind to make you feel in any way as to your bodily harm or insults, is that right?

A. No, sir.

Mr. Hoddick: I don't understand that question.

Mr. Miho: Well, the witness understood it.

The Court: He answered yes, sir.

Mr. Miho: I was just talking to Mr. Hoddick. I'm sorry.

Q. Now, when Mr. Cavness came in like that, you got your search warrant out or did you have it in your pocket?

A. I had the search warrant in my right hand and my badge in the left hand.

(Testimony of William K. Wells.)

Q. And didn't you say you grabbed him with one hand?      A. No, sir.

Q. Didn't you so state before the U. S. Commissioner that you grabbed his left hand because he shoved you?

A. He shoved me first. No, sir. He shoved me first.

Q. So you shoved him? You grabbed him, didn't you say that?

A. When he shoved me, then I grabbed his left hand.

Q. And you had something in both your hands but you still were able to grab his one arm? [74]

A. I grabbed his left arm.

Q. And what did you have in your left hand?

A. My badge.

Q. So you dropped your badge?

A. No, sir, I held on to my badge.

Q. What did you have in your right hand?

A. The search warrant.

Q. You didn't have a chance to read the search warrant to him when he came in, according to your story?      A. No, sir.

Q. You had to wait until you got inside the house before you could read the search warrant to him?      A. That's right, sir.

Q. And that was the first time you served the search warrant on Cavness, that was in the house, is that right?      A. Yes, sir.

Q. Now, he was bleeding profusely from the back of his head, was he not?

(Testimony of William K. Wells.)

A. He was bleeding, yes, sir.

Q. Do you remember who was it that used a blackjack on him?

A. I didn't see anybody use a blackjack on him, Mr. Cavness.

Q. You didn't see?

A. No, sir. The only time I saw anybody use a blackjack [75] was when I told Mr. Abbey to get his hand open, and he hit his blackjack on his head and his hand opened, his left hand, because he had it clutched like that (indicating). We couldn't open it.

Q. So you saw Abbey hit his hand with his blackjack?

A. Yes, sir.

Q. And you told him to do that?

A. I told him if he could see if he could open his hand, so he konked his left hand.

Q. Who else had a blackjack among the eight?

A. I think that is the only one I saw.

Q. Are you sure?

A. Yes, sir.

Q. You know whether Abbey used a blackjack on the back of Cavness' head or not?

A. No, sir.

Q. You told us that Cavness fell back twice, did you not? He fell down twice?

A. Twice. And the last time, I would say, the third time, when we got him down on his stomach.

Q. Did he fall down or was he knocked down with a blackjack and a couple of blows?

A. You mean the third time?

Q. At any time?

A. No, sir. [76]



(Testimony of William K. Wells.)

Q. He was bleeding from his mouth, too, was he not, profusely? A. I think that——

Q. Just answer the question. A. Yes, sir.

Q. Never mind the explanation.

Mr. Hoddick: I think the witness ought to be able to answer the question in as much detail as he sees fit.

Mr. Miho: Your Honor please, it is a very simple question. Wasn't he bleeding from his mouth?

The Court: It may be simple but there is no rule that requires that an answer be confined to yes or no. He may answer yes or no and then explain if he wishes to. Have you finished your answer?

The Witness: No, sir.

The Court: All right.

A. He was bleeding from his mouth, I think, from the time that he had the Vicks inhaler tube in his mouth, and he bit on it.

Q. Well, how would that cause a bleeding in his mouth?

A. Because it was cracked and a couple of the boys were trying to get it out of his mouth.

Q. In fact, they tore his left lip open on the side, isn't that right?

A. I don't know if it was the left or right. Either [77] one.

Q. Well, his lip was torn open, wasn't it?

A. Beg pardon?

Q. One of his lips was torn open, wasn't it?

A. Yes, sir.



(Testimony of William K. Wells.)

Q. You were right there? (To Defendant Cavness.) Stand up. Will you come up here. (To the Witness.) You recall which lip it was now that was torn open?

A. Maybe it is the left. I don't know. It is either the left or the right.

Q. I show you what looks like a scar here. (Indicating on Cavness.)

A. It could be the left, yes, sir.

Q. It was the left, wasn't it?

A. Yes, sir.

Q. It was torn open from here to here about a half inch, isn't that right?

A. I really don't know.

Q. You don't know?

The Court: Wait a minute. You are both talking for the record about the man's lower lip.

Mr. Miho: I'm sorry, your Honor. The lower lip.

Q. You know the skull in the back where I am pointing at, the top part, the rear of his skull, was split open by some blunt object? [78]

A. It was bleeding from up there.

Q. Don't you remember the scalp kind of peeling out and showing an opening there?

A. No, sir.

Q. You don't? A. No, sir.

Q. What kind of a shirt did he have on that day? A. Either dark brown or——

Q. I show you what purports to look like a

(Testimony of William K. Wells.)

woolen shirt. Do you remember seeing that? Take a good look at it.

A. This is the shirt that Mr. Cavness had on.

Q. Now, what are those splotches in the shirt there? A. Blood.

Mr. Hoddick: Objection, your Honor. I don't think the witness is qualified to testify as to blood spots there.

Mr. Miho: I will withdraw the question, your Honor, please.

Q. He had blood over his shirt in the front and the back, isn't that right? He was bleeding on this shirt, wasn't he, that day? A. Yes, sir.

The Court: What?

A. Yes, sir.

Q. And you say you didn't see his skull open in the [79] back?

A. Well, I saw what you call a cut up there.

Q. You saw a cut?

A. And he asked, he wanted a towel, and we gave him a towel.

Q. When did you give him a towel?

A. Inside.

Q. In the house? After you read the search warrant? A. Yes, sir.

Q. Didn't you take him, weren't you nice enough to take him to the emergency hospital afterwards?

A. A couple of the other boys took him.

Q. And you questioned him in the police station later on after he got through the emergency hospital? A. Yes, sir.

(Testimony of William K. Wells.)

Q. And you saw him at the police vice squad?

A. In the vice squad office, yes, sir.

Q. Now, how many stitches, I mean how many clamps did he have in the back of his head to put his skull together? A. I really don't know.

Q. Don't you watch whether they are hurt sufficiently to be questioned or not?

A. I asked him if he is all right and he said yes.

Q. Didn't you notice whether he had clamps on the back of his head or not? [80] A. No, sir.

Q. You didn't? A. No, sir.

Q. Would you deny that he had clamps on the back of his head?

A. He could have had clamps there. I was busy with the other officers and evidence and trying to question him.

Q. But you were there and you saw him, didn't you, in the vice squad?

A. When he came back, yes, sir.

Q. And you still say you don't know whether he had any clamps on the back of his head or not?

A. I don't recall seeing any clamps.

The Court: Wait until the question is finished.

Q. How long did you see him at the vice squad?

A. I think he was there for about three-quarters of an hour.

Q. How many officers at the time he got out of the car took a poke or jumped on Cavness? You give us the name of each one.

A. After Sergeant Alfred Sousa was in the back

(Testimony of William K. Wells.)

of me, then I was joined by Captain Hugh Whitford, Sergeant Richard Sasaki and Sergeant Richard Sasaki, Patrolman Paul Shaffer, and Reserve Officer Arthur Abbey.

Mr. Miho: Your Honor, please, may I be permitted to call [81] these officers here that he just named?

The Court: Yes. As I now understand the witness, based on that question, all of these men either took a poke at him or jumped at him.

The Witness: No, sir, I didn't testify to that.

The Court: That was the question. He asked you to name them.

The Witness: No, sir, I didn't. I misunderstood his question, your Honor.

Mr. Miho: May I have that particular question and answer reread?

(The reporter read the last question and answer.)

Q. Those officers you just named, are these the officers here, is that right (indicating some men who had entered the courtroom)?

A. I misunderstood your question, Mr. Miho.

Q. Will you just answer my question, Mr. Wells?

A. They are the officers that accompanied me on the raid.

Mr. Miho (To the men mentioned previously): That's all. Thank you.

Mr. Hoddick: Now, your Honor, I think the De-

(Testimony of William K. Wells.)

defendant should be given an opportunity to straighten out whatever error he thinks might have been introduced in the record. In other words, a fuller explanation and answer. [82]

The Court: He had had 28 years' experience. He can take care of himself.

Q. (By Mr. Miho): Mr. Wells, you heard the question and answer reread by the reporter?

A. Yes, sir.

Q. Now, you wish to change you story?

A. I don't wish to change my story. But I misunderstood the question, Mr. Miho.

Q. How long have you been an officer in this kind of work? A. About 28 years.

Q. How many times do you think you have testified in court? A. On numerous occasions.

Q. Numerous or innumerable occasions?

A. Yes, sir.

Q. Innumerable? A. Yes.

Q. And you say that you misunderstood my question? A. Yes, sir.

Q. Then I will give you an opportunity to change it, if after 28 years you misunderstood my question; I will give you an opportunity to change it in any way you want. Now, see if you can change it.

A. I at no time saw Mr. Whitford, Sousa, Paul Shaffer, Abbey, strike the Defendant Cavness.

Q. Who and who did you see strike Cavness?

A. I didn't see anyone strike Cavness.

Q. So far as you know, you were just an innocent bystander, is that right? A. No, sir.

(Testimony of William K. Wells.)

Q. You were the first to see Cavness, is that right?      A. Yes, sir.

Q. You were the first officer or first person to talk to Cavness, is that right?      A. Yes, sir.

Q. And you stated a while ago, if I understood you correctly, that some officer—and I won't name him—some officer joined you from the back, didn't you?      A. Yes, sir.

Q. Who was that officer that joined you?

A. Sergeant Sousa.

Q. And for what purpose did he join you, for what purpose?

A. To assist me, to subdue Mr. Cavness.

Q. To subdue Mr. Cavness?      A. Yes, sir.

Q. And what did he do in order to assist you to subdue Mr. Cavness? [84]

A. When Mr. Cavness shoved me, Mr. Sousa came to my assistance.

Q. I see. Mr. Cavness was still in the car, was he not?

A. By that time he was out of the car. He was in the car when he shoved me.

Q. That's what I thought you said originally, that he shoved you while he was still in the car.

A. Yes, sir.

Q. That his left foot was on the running board. Did you say running board?

A. It was hanging out.

Q. Hanging out? And his left hand was on the left door?      A. Yes, sir.



(Testimony of William K. Wells.)

Q. Just as you approached him and showed him your badge? And then with his left hand he shoved you? A. That's right.

Q. Now, where did he shove you?

A. Like this (indicating).

Q. Before anything was said or done he shoved you, is that right?

A. No, after I had told him—I identified myself and told him that I had a search warrant to search his premises. That's when he shoved me.

Q. It wasn't that the door by any chance touched you, Mr. Wells? A. No, sir.

Q. That would be fantastic?

A. That's right.

Q. I see. Do you remember anyone calling the Defendant words something like, "You dam black son of a bitch," or, "You damn negro," or something like that? A. No, sir.

Q. You deny that you might have heard something like that said by somebody within that group?

A. I deny.

Q. You heard everything? A. No, sir.

Q. What did you say or do when, as you claim, you were shoved by the Defendant?

A. I grabbed his left hand.

Q. What was the reason for grabbing his left hand even if he shoved you?

A. While talking to Mr. Cavness I saw he had a Vicks inhaler tube in his right hand.

Q. So you got suspicious, isn't that right?



(Testimony of William K. Wells.)

A. Yes, from information that I received.

Q. You get a lot of information? So you got information and from that information you got suspicious of that [86] Vicks inhaler tube?

A. That's right.

Q. You used Vicks inhalers in your lifetime, haven't you? A. Yes, sir.

Q. You know that is one of the most common forms of medicinal preparations in use by the ordinary people, do you not? A. Yes, sir.

Q. But when Cavness had it you got suspicious, didn't you? A. Yes, sir.

Q. So you thought you should by force grab that inhaler, didn't you? Didn't you?

A. That's right.

Q. And for that purpose you asked your fellow officers to help you to subdue him, as you say?

A. I didn't ask. They came to my assistance.

Q. Without your telling them anything they just came to your assistance?

A. I casually said, "I think he's got it in his right hand."

Q. "I think he's got it in his right hand." And then Officer Shaffer was the first, Sousa was the first one to come to your resuce? [87]

A. That's right.

Q. And as soon as Officer Sousa came to the scene, you stepped out completely, is that right?

A. No. By that time Mr. Cavness, Sousa and I were a little away from the left front door. And Mr. Cavness started to break away from us to-

(Testimony of William K. Wells.)

wards, in front of the garage there. Then we were joined by Mr. Whitford and Mr. Shaffer and Mr. Abbey and Mr. Sasaki.

Q. And when Cavness came out, he wanted to run away from you, and these seven or eight officers, isn't that right?

A. He tried to get away from Sousa and I.

Q. And Sousa was doing what to Cavness as he came out of the car?

A. He was holding his right arm.

Q. Holding Cavness' right arm? And what were you doing?

A. At the time, what you call, between then, I stuck my badge in my left, in my front pocket, and my search warrant and—no—yes, then I had a hold of his left arm again and he started to get away from us, and when he came out of the car he fell down and got up and as he tried to get away from us, running towards the, I would say, the front of the car, he fell down again and that's when he got up on his knee; that's when we were joined by the other officers and the struggle took place then. [88]

Q. He was not, by anyone, yourself or any of the officers, placed under arrest at any time, is that right? Answer the question yes or no.

A. Yes, sir.

Q. When?

A. After I served the search warrant on him and the capsules were found out in the yard.

(Testimony of William K. Wells.)

Q. So that during this physical struggle that you had with Cavness, before any officer touched him, he was never placed under arrest, is that right?      A. No, sir.

Q. The only reason you and your brother officers manhandled, if I may use the word, Cavness was simply because he had a Vicks inhaler in one hand and because he tried to get away from you seven or eight or nine officers, is that right?

A. We didn't try to manhandle Mr. Cavness. We tried to subdue him.

Q. Well, subdue, then. He was bleeding from his mouth, his lips, lower lip was cut open; his scalp in the back was bleeding, and he was bleeding profusely on his shirt, this shirt here, the front, as well as the back; it was bleeding profusely, and by profusely——

A. He was bleeding but I wouldn't say profusely.

Q. He was bleeding quite a bit, wasn't he? [89]

A. Quite a bit, yes, sir.

Mr. Miho: Do you have any objection to this being introduced as Defendant's exhibit, Mr. Hoddick?

Mr. Hoddick: I would at this time.

Mr. Miho: May that be marked for identification, your Honor?

The Court: Yes.

The Clerk: Defendant's 1 for identification.

(The clothing article referred to was marked  
"Defendant's Exhibit 1 for Identification.")

(Testimony of William K. Wells.)

Q. (By Mr. Miho): Do you know after Shaffer grabbed hold of Cavness who else came to the——

A. Shaffer—there was Sasaki, Abbey——

Q. Just a moment. I am trying to get this step by step. If the two officers came at the same time, tell us that. But give us the complete details. Now, after Shaffer jumped on—maybe he didn't jump on him, but after Shaffer tangled with Cavness Sasaki came and entered the picture, is that right?

A. I don't recall.

Q. Well, you and Shaffer——

A. Sousa and I first.

Q. Sousa? I'm sorry. Sousa and you?

A. That's right. [90]

Q. Sousa and you?

A. That's right. And then Captain Whitford. When the three of us were struggling with him, then the rest of them——

Q. What did Whitford do?

A. Whitford grabbed Mr. Cavness' right hand at one time.

Q. Did you say that Sousa had already grabbed his right hand?

A. By the shoulder. When we got in the front of the car that's when Whitford came along.

Q. Where did Whitford grab Cavness?

A. One time during the struggle I saw Whitford had a hold of his right hand.

Q. Right hand?                      A. Yes.

(Testimony of William K. Wells.)

Q. At one time? A. At one time.

Q. At another time what did you see?

A. I don't remember.

Q. Now, Abbey came along about that time or Sasaki? Which one was it first?

A. I don't recall.

Q. You don't recall? A. No, sir. [91]

Q. But all the other officers joined in about that time, isn't that right? A. Yes, sir.

Q. And you remember who it was that hit Cavness on the head? A. No, sir.

Q. You still don't remember that?

A. No, sir. When Whitford got hold of his hand then I had Cavness around his, you'd say——

Q. Waist?

A. ——waist, waist there with my head down like that and wondering what took place. I couldn't see.

Q. That didn't last very long, did it?

A. Oh, yes, it lasted about three, three and one-half minutes.

Q. All right. How long did the entire struggle last?

A. I would say between three and four minutes.

Q. Is that all? A. Yes, sir.

Q. I see. Now, you said Cavness came out of the door of his car, fell on his knees?

A. Partly fell on his knees, partially.

Q. Partially? A. Yes, sir.

Q. Did he hit the ground on his knees? [92]

(Testimony of William K. Wells.)

A. Yes, sir.

Q. And then what happened?

A. Then he got up and as he started to struggle away from us towards the front there he went down again.

Q. He went down on his, flat on his stomach, didn't he?

A. At that time, no, sir; on his knee.

Q. On his knee again? A. Yes, sir.

Q. And then he got up?

A. Got up and then the real struggle took place in front of the car on the lawn there.

Q. And he had another fall?

A. Then——

The Court: Another what?

Mr. Miho: Fall.

A. ——we got him down on his stomach.

Q. On his stomach? A. Yes, sir.

Q. That was the last fall? A. Yes, sir.

Q. And that was not a fall but you shoved him down on his stomach?

A. I think somebody grabbed his feet. He wanted to get him down so we can—— [93]

Q. Get the evidence?

A. That's right.

Q. Somebody grabbed and he fell on his stomach, and flopped down on his stomach, and at no time——altogether you have described three sorts of knock-downs, when he first came out of the car, when he started to go, and then he fell down, not shoved



(Testimony of William K. Wells.)

down but fell down, and then he came back by the car and that's when he was really shoved down on his stomach?      A. That's right.

Q. So that at no time did he hit his head on the ground, did he, or any of——

A. I don't recall.

Q. Well, you were there, Mr. Wells?

A. Yes, but it happened so fast.

Q. You have been an officer for 28 years. Your job is to limit things, every detail, if you can, is that right?      A. Supposed to.

Q. Still you don't remember? If he would hit anything, the side of his head, any object, a door, stone, another man's knee, anything like that, you don't remember?      A. No, sir.

Q. So far as you are concerned his scalp split open and you don't know how that happened?

A. That's right.

Q. You just know that he was bleeding from the back [94] of his head and his scalp was open, that's all you know?      A. Yes, sir.

Q. And he was bleeding from it?

A. That's right.

Q. And the lips being cut open?

A. That's right.

Q. You remember that, too?      A. Yes, sir.

Q. But the exact details of how that happened or who did it, you don't know?      A. No, sir.

Q. Now, he was in a semi-conscious state when he fell down the last time, was he not; groggy, wasn't he?

(Testimony of William K. Wells.)

A. I won't say that. As soon as we opened the left hand he said, "Why, take me in." We, when we got him up, that is the first thing he said, "Take me into the house."

Q. Calm and collected? A. Yes, sir.

Q. He was bleeding on the head, he was knocked down, coming to his knees twice, eight officers jumping on him, and still he was calm and collected?

A. He was.

Q. Now, Mr. Wells, you testified before the U. S. Commissioner on the hearing on this case when I was present questioning you, is that right? [95]

A. Yes, sir.

Q. Do you remember stating to the U. S. Commissioner at that time in answer to one of my questions that the Defendant Orestus Cavness did not at any time fight back, that he did not at any time fight anyone back? You remember making that?

A. What do you mean by fighting back?

Q. Hitting, shoving.

A. Well, he shoved me.

Q. Well, let's say outside of that first shoving of you. Is it correct, my recollection and my notes, that you stated before the U. S. Commissioner that outside of that shoving, let us say, that Cavness, this Defendant, did not hit back at anyone, at any one of the officers at any time?

A. That's right, sir.

Q. Now, after he was shoved down on his stomach, received these injuries,—how, we don't know—

(Testimony of William K. Wells.)

you say he was not semi-conscious or groggy at all?

A. No, sir.

Q. And he got up by himself?

A. We got him, I mean we got him up.

Q. You had to help him up, didn't you?

A. Well, I mean, yes, we kept, we kept still holding his left and right arms and we handcuffed him and took him inside, served the search warrant on him? [96]

Q. You handcuffed him?                      A. Yes, sir.

Q. Who handcuffed him?

A. I think Mr. Abbey.

Q. Then you—who held onto him as you went into his house?

A. I don't recall who.

Q. Well, you were one of them?

A. I went in. I think Mr. Whitford, Mr. Shaffer—

Q. Sousa?                      A. No, sir. Mr Sasaki.

Q. Didn't Abbey and all the rest of you go up to the house?

A. No, Mr. Abbey and Sousa stayed in the lawn.

Q. Didn't they proceed on towards the house together with the rest of you?

A. From Mr. Abbey's house?

Q. Yes. No, after the struggle was all over, didn't all of you try to go into Cavness' house up as far as the porch anyway, the door?

A. We went into his house except Mr. Sousa and Mr. Abbey. They stayed outside on the lawn.

(Testimony of William K. Wells.)

Q. On your instructions?

A. Beg pardon?

Q. On your instructions? [97]

A. No, sir.

Q. They just stayed behind

A. They just stayed behind, yes, sir.

Q. And the rest of you went into the house?

A. Yes, sir.

Q. You told Cavness to go clean himself up, didn't you?

A. When we went into the house?

Q. I didn't ask you when. Did you tell him to go and clean himself up? A. No, sir.

Q. He asked to clean himself up?

A. He asked me. I said, all right. And we took the cuffs off him.

Q. But that was not until after you read the search warrant to him, is that right?

A. That's right.

Q. So that at the time you gave him the search warrant, as a result of this struggle he was bleeding from his head and from his lips and you read him, you told him to sit down, didn't you?

A. Yes, sir.

Q. And then told him, I have a search warrant to search your house, didn't you?

A. It is the second time I told him. [98]

Q. And the second time you read the search warrant word for word, didn't you? Didn't you?

A. No, sir. I think Mr. Cavness—I asked Mr.

(Testimony of William K. Wells.)

Cavness if he wanted me to read the search warrant and he said no.

Q. So you never read the search warrant to him?

A. He didn't want me to read it to him.

Q. You read it?

A. No, he didn't want it read so I handed him the copy.

Q. And the reason he didn't want you to read it was because he was bleeding and he was sore—I will withdraw the question. He asked you to go clean himself up before you offered to read the search warrant, though, didn't he

A. No, sir, I think it was before that.

Q. Before you read the search warrant

A. Then he asked me if he can go clean himself up. At the same time he apologized for struggling with the officers.

Q. Oh, he apologized?

A. Yes, sir. He said he was sorry for what he did.

Q. Did you apologize to him for having somebody bust him, cutting him up? Nobody apologized?

A. I didn't bust him up.

Q. I'm sorry. Somebody having done so.

A. I didn't apologize to him.

Q. No one apologized? [99]

A. No, sir.

Q. To Cavness?

A. No. Beg pardon?

(Testimony of William K. Wells.)

Q. No one apologized to Cavness?

A. No.

Q. But he apologized to you?

A. Yes, sir.

Q. For struggling?                    A. Yes, sir.

Q. Didn't he tell you, "Why didn't you tell me what you wanted to see me about? Otherwise I wouldn't have tried to get away from you?"

A. No, sir, he didn't say that.

Q. He didn't say that?                    A. No, sir.

Q. Well, as you went into the door, he said, "Let me clean myself up," or words to that effect, is that right? That was one of the first things he said as you went into the house?

A. Yes, sir.

Q. And you told him, "Just a moment, let me read this warrant because I have got to serve the search warrant"?

A. I think he asked for a towel and he was given a towel at the time. And then I told him to sit down and asked him if he wanted me to read the search warrant, and he said [100] no. I gave him copies of the search warrant. Then he asked to go in the kitchen, I mean the bathroom, to clean up.

Q. He went to clean up?                    A. Yes, sir.

Q. He washed the blood off his face?

A. Yes, sir.

Q. And then while he was in the bathroom, what did you people do?

A. Prior to going into—as we took the hand-



(Testimony of William K. Wells.)

cuffs off Mr. Cavness, that is when Mr. Abbey called to me to come outside and I took Cavness outside and he pointed out a piece of the top of a Vicks inhaler tube with two capsules stuck to it. And I was present when Mr. Shaffer found six capsules right along where we were struggling. And then we went back into the house and he cleaned himself up.

Q. Well, where was Cavness when you went outside

A. I took him outside with me.

Q. Oh, you took him outside?

A. Yes, sir. And he was present when Mr. Abbey pointed to it.

Q. Capsules?

A. To the two capsules. And then he was present when Mr. Shaffer found the six capsules on the lawn there.

Q. Now, you go to the blackboard, will you, Mr. Wells, and put down where the car was, where the struggle took place, [101] and where the house was, and where you found these two capsules?

A. I will try to.

The Court: Can you all see on the blackboard?

Mr. Miho: Can you all see the blackboard? Just a moment, if your Honor please. May the officers who are going to be witnesses be ordered to keep away from the door? They can hear what is going on in this courtroom.

The Court: Well, the order of exclusion implies

(Testimony of William K. Wells.)

that they are to keep beyond the hearing of that which transpires in the courtroom. I, too, was noticing them in the hall there and observing them myself. It is too bad we don't have an appropriate place for witnesses to sit down in and wait. It occurs to me that the Grand Jury room or the ante room thereto should be supplied with sufficient chairs for witnesses to sit down there and stop roaming around the hallways. Actually there are only about five more minutes today. I doubt if we will get to them. I think they could actually be excused for the day.

Mr. Miho: Yes, your Honor please.

The Court: Henceforth tell the witnesses and people who are waiting to testify that I'd much prefer them to make themselves as comfortable as possible in the quarters to which I have just referred, and see to it that there are chairs and ash trays in there. [102]

Mr. Hoddick: Your Honor, I'd like to be able to indicate to the witnesses what time they should return.

The Court: We had that worked out this morning. What was it—Wednesday afternoon?

Mr. Miho: Two o'clock Tuesday afternoon.

Mr. Hoddick: No, Wednesday afternoon.

The Court: All right.

(Witness writes on blackboard.)

Q. (By Mr. Miho): Where is the garage, Mr. Wells?

(Testimony of William K. Wells.)

A. Here is the garage (indicating).

Q. Two-car or single garage?

The Court: Where is the garage?

A. Right here, your Honor. This is the car.

The Court: What sort of a garage is it, a covered-over affair?

A. No, sir, it is just on the top.

Q. No walls? Just trestles on the side?

A. Yes, sir.

Q. In other words, you can see right through the garage from all angles, is that right?

A. That's right.

Q. Sort of a lean-to?                      A. Yes, sir.

Q. And there is a little fence to the house there? Where is the entrance to it?

A. This is all open. This is all hedge, panic. This is a hedge here, over here, over here and over here. This is the car. First came out here. We got him out here. Then he fell on his knee and he fell on his knee again and then the real struggle took place, I would say, about here. See, there is——

Q. Will you mark it 1, 2 and 3 where the struggles took place?

A. One, two, three, about here.

Q. Now, how wide is the entrance to the premises, 20 feet, 15 feet?

A. You mean the garage entrance?

Q. No, the entrance to the premises.

A. You mean from here up here to the front porch?

(Testimony of William K. Wells.)

Q. The entrance to the yard.

A. To the yard? Oh, well, it is open from here to the garage.

Q. About how many feet?

A. I would say about from here to here to that wall.

Q. It would be about 15 feet?

A. Approximately.

Q. All right. Now, which is the front of the house, Mr. Wells? A. Here. [104]

Q. Where is the front door?

A. The front door is right here.

Q. And where is the living room?

A. This is the living room, bedroom and toilet.

Q. And where is the kitchen?

A. Here. And this is a rear room that he used for a dining room.

Q. Will you put "D. R.?"

A. Dining room "D. R." From here is a small——

Q. Hallway? A. Yes, sir.

Q. Now, where was the Defendant's car as he came in just prior to the fight with relation to the garage? A. Right in the garage there.

Q. The struggle started in the garage?

A. Yes, sir.

Q. There are no walls to the garage excepting supporting posts?

A. If I remember correctly, yes, sir.

Q. I see. So that he drove into the garage?

(Testimony of William K. Wells.)

Will you indicate what, will you indicate with an arrow the direction that this car came into the garage (witness writes on blackboard)? And give us the arrow of the direction you and your officers came in. Where is the house—across the yard? [105]

A. Here.

Q. Put an "A" on the house. I think that was Mr. Abbey's house.

A. "A." We came out of here.

Q. So that after he drove in, you people followed the car in? A. That's right.

Q. Now, put down any objects other than grass immediately around the garage, Mr. Wells, other than the garage posts and the hedge fence. If there are any objects on the ground, plants, stones, or any kind of obstructions of any kind right around the premises of that garage, between the garage and——

A. Right here is a coconut tree, one there and one about here.

Q. That's all?

A. That's all I can recall at the present.

Q. How many feet is it from the hedge to the side of that garage, approximately?

A. Approximately 10 feet.

Q. Would you indicate there 10 feet, put an arrow? A. From here?

Q. From the hedge to the side of the garage.

A. Is this the hedge you are talking about?

Q. The left hedge as you go into the house. Put

(Testimony of William K. Wells.)

another [106] arrow on the other side so that we will know what it is.

Q. Now, this 10 feet will be from this hedge to the side of the garage, approximately?

A. Approximately 10 feet.

Q. Approximately? A. Yes, sir.

Q. And this distance from here to here is how many feet? A. I would say——

Q. A hundred feet?

A. ——anywhere from 65 to 75.

Q. And from here to the side of this house. how many feet?

A. I think about 10, 15, I would say.

Q. From here to here?

A. Well, approximately.

Q. Well, how much longer is it than the distance from the hedge to the side of the garage?

A. I would say at least 20, 25 feet.

Q. So the struggle took place—I will mark it, 1, 2, 3, is that right? A. Yes, sir.

Q. Is that about right? A. Right.

Q. Came out of the car, got on his knees? [107]

A. Yes, sir.

Q. Then you and Sousa and he ran away to here? A. Yes, sir.

Q. And all the other officers came on?

The Court: I think we will leave it there for the day. Due to complications involving tomorrow and Wednesday morning, we will have to continue this case at this time until Wednesday afternoon at two. Is it two?



(Testimony of William K. Wells.)

Mr. Hoddick: Yes, your Honor.

The Court: All right. So until Wednesday at two, you are excused.

(The Court adjourned at 4:05 p.m.) [108]

Honolulu, T. H., December 7, 1949

(The Court convened at 2:00 p.m.)

The Clerk: Criminal No. 10,256, United States of America versus Orestus Cavness, for further trial.

The Court: Are the parties ready?

Mr. Miho: Yes, your Honor please, ready for the Defendant.

Mr. Hoddick: Ready for the Plaintiff.

The Court: Note the presence of the Jury and of the Defendant. Mr. Wells, you are the same Mr. Wells who heretofore has testified in this case?

The Witness: Yes, sir.

The Court: You are under oath. You may proceed; proceed with your cross-examination.

### WILLIAM K. WELLS

a witness on behalf of the Plaintiff, having previously been sworn, resumed and testified further as follows:

#### Cross-Examination (Continued)

By Mr. Miho:

Q. Mr. Wells, you rememer testifying before the U. S. Commissioner, Harry Steiner, at the prelimi-

(Testimony of William K. Wells.)

nary hearing?           A. Yes, sir.

Q. Do you remember stating before that Commissioner [109] and in my presence that the officers who joined you after you approached Cavness were Whitford, Sousa and Shaffer and Abbey?

A. Yes, sir, and I think I included Sasaki.

Q. If I stated to you that you never mentioned officer Sasaki's name, would that be another mistake on your part?           A. Yes, sir.

Q. Well, the actual truth is, then, that Sasaki, as you testified here the other day in this Court, that Sasaki was also with you?

A. Yes, sir.

Q. At that time?           A. Yes, sir.

Q. So that what you may have stated before Judge Steiner is a mistake if you did omit Sasaki's name?

A. Well, I just omitted officer Sasaki's name.

The Court: Well, now, let's get that straight. You haven't got a transcript of that, have you?

Mr. Miho: I have not. Just my notes.

The Court: Well, neither of you know what he said. He can't remember and you are not positive.

Mr. Miho: Well, I just stated to him whether he mentioned Sasaki's name and he said he wasn't sure or words to that effect.

The Court: Well, anyway, the point is that neither of you have an accurate transcript of what went on at the [110] preliminary hearing. All you have are your notes and all he has is his memory.

(Testimony of William K. Wells.)

Mr. Miho: I took pretty copious notes at that hearing.

The Court: Well, that doesn't make them the official record.

Mr. Miho: No, I am attacking his credibility on the recollection and his statement which I am reading back to him.

The Court: You are getting near the line of inferring that you have an accurate report of what he did say, and I know you want to be fair.

Mr. Miho: Absolutely fair.

The Court: And all I want to do is to make it clear to everyone that you are not representing that you have an official transcript.

Mr. Miho: No, your Honor please.

The Court: All right.

Q. (By Mr. Miho): Well, the truth of the matter is now that Sasaki was present with you?

A. Yes.

Q. Together with Whitford?

A. Whitford, Sousa, Shaffer and Abbey.

Q. And Abbey? A. Yes, sir. [111]

Q. Now, you also stated at the hearing the other day here that some officers were stationed at the Waikiki Fire Station? A. Yes, sir.

Q. Will you name those officers who were waiting for you, for your signal, at the Waikiki Fire Station?

(Testimony of William K. Wells.)

A. They were officers Harry Pestano, Francis Ferry, Roger Marcotte, and Oliver Roberts.

Q. Oliver who? A. Roberts.

Q. However, Captain Whitford——

A. Captain Whitford was with me.

Q. ——was with you?

A. In Mr. Abbey's house before the raid.

Q. Well, will you name who were with you at Reserve Officer Abbey's house?

A. Was Captain Whitford, Sergeant Alfred Sasaki—I mean Sergeant Alfred Sousa, and Richard Sasaki, Officer Paul Shaffer, Reserve Police Officer Arthur Abbey, and myself.

Q. Where was Officer Marcotte?

A. Officer Marcotte was at the Waikiki Fire Station.

Q. With the rest of the officers? A. Yes.

Q. Now, you had a pre-arranged signal to notify them when Cavness returned, or when you wanted them to assist you, [112] is that right?

A. One of the officers went and telephoned them.

Q. Went and telephoned them?

A. Yes, sir.

Q. And who was that officer?

A. I think it was Officer Sergeant Sousa.

Q. Sergeant Sousa? A. Yes, sir.

Q. And when did he telephone them, if you know?

(Testimony of William K. Wells.)

A. I really don't know when he telephoned them.

Q. Did you instruct the other officers to instruct them who were waiting at the fire station?

A. Well, the pre-arrangement we made was that one of the officers was to telephone them.

Q. Telephone them when?

A. Right after Mr. Cavness returned.

Q. You gave the signal, did you not, I presume?

A. No, sir, I didn't instruct Sergeant Sousa to go to the telephone.

Q. You did not?                      A. No, sir.

Q. Anyway, when Cavness returned you were the first to leave Officer Abbey's house?

A. Yes, sir.

Q. And you walked over to Cavness' car? [113]

A. Yes, sir.

Q. And who went with you at that time?

A. Was followed by—I remember then, I think it was Sergeant Sousa who was in the back of me, followed by the other officers.

Q. Sergeant what?                      A. Alfred Sousa.

Q. Sousa was behind you?                      A. Yes, sir.

Q. He was the first officer behind you?

A. Yes, sir.

Q. And who else was with or behind Sousa?

A. I really don't—

Q. You don't know?                      A. No, sir.

Q. Well, did all of the officers who were waiting with you in Officer Abbey's house come out when you came out?

(Testimony of William K. Wells.)

A. They followed me out, yes, sir.

Q. Followed you out? A. Yes, sir.

Q. But all you remember is that Sousa followed in the immediate back of you? A. Yes.

Q. Will you go to the map and place yourself in the position you first approached the Defendant when you came [114] to him?

The Court: Do you want that board closer?

Mr. Miho: I believe that would be better, if your Honor please.

The Court: Mr. Clerk and Mr. Bailiff, would you move it closer so that they can see it better. Mr. Wells, you have a tendency to write very small. I suggest that you make bigger marks. And Mr. Miho, do you want that request executed on that drawing that is already on the board?

Mr. Miho: A larger drawing on the right hand side, if your Honor please, would be much clearer.

The Witness: Of this here?

Mr. Miho: Yes.

The Witness: Do you want me to draw it to the best of my recollection?

Mr. Miho: Yes, just a rough draft.

(Witness writes on blackboard.)

The Court: In the drawing you are asking him to make, Mr. Miho, I infer that you are not concerned with the house diagram?

Mr. Miho: Just the garage.

The Court: And the yard?

Mr. Miho: The yard.



(Testimony of William K. Wells.)

The Witness: The garage and the yard. Here is the garage. Do you want me to draw the automobile? [115]

Mr. Miho: Yes, please.

A. I came out from over here and I was over here where the X is, and with Mr. Sousa in the back of me.

Q. Put the garage in, please.

A. This is a small open garage.

Q. Well, isn't there a building? Indicate the garage.

A. Here is the building here and this is more of a small room in the back here. There is a fence over there. This is more of an open garage.

Q. More of an open garage?

A. Open garage.

The Court: No roof?

The Witness: To the best of my recollection, no roof.

Q. How many times have you been near that, have you observed that house?

A. Well, I haven't observed it very closely in front of the place. I parked down about 200 yards down towards Koko Head side.

Q. Have you had that house under observation since October of last year, something like that, did you not?

A. No, sir, not since October last year.

Q. When? A. Around June.

Q. Around June? A. Yes, sir. [116]

(Testimony of William K. Wells.)

Q. July? Of this year?

A. Of this year.

Q. Well, more or less continuous since that time, you have had that house under observation continuously?

A. Not continuously.

Q. Well, how many times did you see that house and garage?

A. Many occasions.

Q. Many occasions, and you still don't remember whether that garage has a roof or not?

A. To the best of my recollection it is an open garage, an open roof.

Q. You mean there is no roof?

A. To the best of my recollection. There is a roof back here that comes out here. I would call it a lean, what comes out, that what you call it—is that what you call it?

Q. Now, to come back to your prior statement, didn't you state to us yesterday that Officers Whitford, Sasaki, Shaffer and Abbey were the only ones that followed you to the house when you came out of Officer Abbey's house?

A. I may have made that statement. Officer Sousa was with us.

Q. Are you sure he was with you?

A. Yes, sir.

Q. So that if you stated yesterday that Sousa—if you [117] did not mention Sousa's name you were mistaken?

A. I was mistaken.

Q. Do you remember making this statement yesterday in my cross-examination, my question to you being,

(Testimony of William K. Wells.)

“And when you came up to the premises you stationed the seven or eight officers in a house across Leahi Avenue,” and your answer being,

“No, sir, Whitford, Sasaki, Shaffer and Abbey followed me out to the house; the others were at the Waikiki Fire Station,”

do you remember that statement?

A. Yes, sir.

Q. You did not mention Officer Sousa's name at all? A. I forgot to include him.

Q. And yet Officer Sousa you stated at one time was the officer who came to your first assistance?

A. That's right.

Q. And you stated a few minutes ago here that Officer Sousa is the one you remembered specifically approaching the Defendant with you?

A. In the back of me, yes.

Q. And that you don't remember the others, whether they were actually behind you or not?

A. They followed me out of the house.

Q. They followed you out of the house? That part you [118] remember? Whether they were behind you or how many feet behind you and Officer Sousa when you approached the Defendant you did not know, you said there a while ago?

A. That's right.

Q. But yesterday you were pretty certain that they followed you? A. Yes, sir.

Q. And what you stated is a mistake and what you state today is a correct answer?

(Testimony of William K. Wells.)

Mr. Hoddick: I object to that. It is not a question of whether it is a mistake. He has now given them all to you.

Mr. Miho: I am just trying to get the record straight.

The Court: The record will speak for itself.

Mr. Miho: Will you answer the question?

The Court: The objection is good. It is argumentative. The record speaks for itself. Whether he made a mistake or not is something that you can argue from what he said yesterday and today. It isn't for him to say whether he has made a mistake or not. The record will reflect whether he has or not.

Mr. Miho: I am trying in my cross-examination, since it is very material to the defense, to find out how good his recollection is, your Honor. He has made positive statements. Now he admits that he made a different statement yesterday, [119] that he left out this Officer Sousa whom he mentioned today. So I am just trying to ask him whether he made that statement yesterday or not. I am not saying he is a liar. I am just asking him whether he made that mistake yesterday.

The Court: Well, I understand you to have agreed that yesterday he did not include Sousa's name and that he left it out yesterday, and today he put it in. Now, whether he made a mistake or not is for the record to bear out on the basis of an argument advanced on that score.

(Testimony of William K. Wells.)

Mr. Miho: I will withdraw the question.

The Court: The Jury will determine it.

Q. (By Mr. Miho): Now, Mr. Wells, you are positive of one thing, then, that as you approached the Defendant at that spot Officer Sousa was behind you? A. Yes, sir.

Q. And when you touched the Defendant Officer Sousa was the one that came to your rescue first?

A. When the Defendant shoved me, then I touched him and then Officer Sousa was the first to come to my assistance.

Q. Now, at that time when the Defendant shoved you, how far away were you from his arm?

A. I was right up about I think, about six inches.

Q. He was still in the car, the Defendant?

A. Yes. [120]

Q. That is certain?

A. He was in the car, yes.

Q. And Officer Sousa was where?

A. He was right in the back of me.

Q. Now, there are two large coconut trees about four feet away from where the car driveway is, is that right? A. Yes, sir.

Q. And a high hedge about at least five feet next to the coconut, immediately adjacent to the coconut tree, all the way to the front, mock orange hedge? A. Yes, sir.

Q. And it is a very thick hedge, is it not?

A. It is quite thick.

(Testimony of William K. Wells.)

Q. In fact, all the leaves are intermingled making it a completely intermerged fence or hedged fence?

A. Well, I didn't examine the hedge closely. I know it is very thick.

Q. Well, nobody could run through that mock orange fence, could they?

A. I really don't know.

Q. Didn't you notice the hedge that is five feet tall, hedge?

A. You are talking about the hedge?

Q. On the lefthand side as you face the garage.

A. That is on the Koko Head side of the garage? [121]

Q. It would be on the makai side towards the sea. I will point it out to you.

A. I didn't go back there. Are you talking about the hedge here (indicating on blackboard)?

Q. Here.

A. Oh, that. I would call it the Koko Head side of the house.

Q. Well, I won't argue on that. But on that hedge that I just showed——

A. This hedge is very thick.

Q. Very thick and very tall?

A. Tall, yes, sir.

Q. Nobody could run through this hedge at any point, could they, from the end of this house to the end of this side?

A. Well, I really don't know. I can't answer that question.



(Testimony of William K. Wells.)

Q. What about the hedge on this side? There is a hedge just as thick in the front, is that right?

A. I don't think this hedge is as thick as this one here (indicating on blackboard).

Q. Well, could anyone run through that hedge, put his body——

A. I really don't know.

Q. You don't know? [122]

A. No, sir.

Q. Now, I have drawn some diagrams indicating these two lines as being a driveway. There is actually a garage, a fairly good-sized garage, as I have indicated on that map, is that right? With a little protruding on this side, is that right? With a roof and with a wall and a wire meshing in front and on the side?

A. Not to the best of my recollection.

Q. Mr. Wells, as a matter of fact that garage door was always and on that particular day was completely closed, was it not, so that nobody could get into that garage?

A. I really don't know. To my recollection, there is no—I didn't see any door there. Maybe I should have had this further out (referring to drawing on blackboard). This is more like a storage room to me, Mr. Miho.

Q. Well, that garage is as long as from where you are standing to the end of this platform, is it not?

A. To me it is an open garage.

(Testimony of William K. Wells.)

Q. Will you answer my question? That garage is as long as this platform, is it not?

A. About that, yes, sir, maybe.

Q. And how many feet would you say the length of this platform is—20 feet?

A. About 20, 22 feet.

The Court: Are you both talking about the same thing? [123]

Mr. Miho: I believe so, your Honor please, the width of this garage, as I have indicated on the map.

Mr. Hoddick: I object to Counsel in effect testifying as to the existence of a garage or not. I don't know whether you are asking Mr. Wells to indicate a garage on the map or something like that. But you are inferring that such a garage does exist there. As I gathered from Mr. Wells, what he has described has been a mere driveway which has no roof over it.

Mr. Miho: I beg to differ.

Mr. Hoddick: He said several times, to the best of his recollection there is no roof.

Mr. Miho: I will ask him again if you want.

Mr. Hoddick: Go ahead.

Q. (By Mr. Miho): Is there a garage such as I have indicated on that diagram there?

A. To the best of my recollection—what do you call?—it is an open garage.

Q. I am asking you a simple question. What kind of a garage can come later. I am asking you

(Testimony of William K. Wells.)

a simple question. Is there or is there not a garage such as I have indicated on this map, the length of which being about 20 feet, Mr. Wells?

A. I dont recollect. [124]

Q. Would you deny that there is such a garage?

A. I don't deny it. It could be.

Q. You don't deny it?

A. It could be.

Q. You just don't recollect?

A. That's right.

Q. And so you don't recollect, you don't recollect whether this garage was closed or open even, you don't recollect that, do you? A. No.

Q. Would you recollect whether this garage has in the front of it wire mesh? Here is the roof and wooden platforms with a small door here and a handle; that this is the front of the garage; that there is a wooden mesh like this—I mean a wire mesh and a wooden wall and a small door here——

Mr. Hoddick: Mr. Miho, the witness already told you that he doesn't recollect the existence of it.

Mr. Miho: Your Honor, this is cross-examination. I have a perfect right to go into this.

The Court: You may answer.

A. No, sir.

Q. You don't recollect that either?

A. No, sir.

Q. Would you deny that there is, that the front was like that when you went there? [125]

(Testimony of William K. Wells.)

A. I don't recollect.

Q. Would you deny it, that there is, that the front is like that?

A. I don't recollect.

Q. You don't recollect? A. No.

Q. But you wouldn't deny it? A. No.

Q. There might be? A. There might be.

Q. And there are two coconut trees, large ones like this, about four feet from the side of this driveway, are there not?

A. To the best of my recollection there's two coconut trees as you go on your left.

Q. And there is a complete wire fence on this side that nobody could go through from the hedge to the end of the garage, is there not?

A. If I remember correctly the wire fence is in the back here.

Q. Isn't there one in the front? There is one fence, wire fence as high as the garage roof on the front, as I have indicated, and also another one in the back, a similar wire fence with, a wire fence where the dog plays, isn't there?

A. To the best of my recollection only one I remember, [126] that is the one in the back here.

Q. But you don't remember that there is a wire fence from the side of the garage to the Koko Head side that you said to the hedge fence?

A. No, sir.

Q. As high as the garage roof? You don't recollect this?

(Testimony of William K. Wells.)

A. Not this one. The first one. I recollect the one in the back here, yes, sir.

Q. Would you deny that there is such a wire fence? A. I said I don't recollect.

Q. Well, I said would you deny it?

A. It could be there that I didn't observe.

Q. Now, when Mr. Cavness drove in with his car, the back of his car was just about even with his front property line, is that right, not as you have indicated but in about this position, isn't that right? A. A little inside.

Q. Inside the hedge?

A. The hedge, yes, sir.

Q. And you walked in through this way?

A. Yes, sir.

Q. Right? Mr. Abbey's house is on this side?

A. Yes, sir.

Q. Immediately across? [127]

A. Yes, sir.

Q. And you were the first to get in?

A. Yes, sir.

Q. And then Officer Sousa followed you?

A. Yes, sir.

Q. And all the officers, the other officers were behind you, right, so far as you can recollect?

A. So far—I think a few of them came from the front. I don't remember who.

Q. In other words, the four or five officers, or six officers, or nine officers who came later on, they surrounded the entire section here, is that correct, in-

(Testimony of William K. Wells.)

dicating to you; officers in the front of the car, officers this way? This, as I indicated with two lines here, semi-circular lines—the only escape so-called, the only place where anyone could get away would be this section here and this section here, is that right? A. Yes, sir.

Q. So that if anybody wanted to get away from the people they couldn't have, is that right? They could not have gotten away from you and your officers, is that right?

A. I don't think so.

Q. And yet you felt you had to subdue this Defendant by force, did you not?

A. Well, he struggled first. [128]

Q. You stated that the only struggle he made was to shove you, is that right?

A. Shove me and when we tried to get the Vicks inhaler tube in his right hand he struggled.

Q. He struggled? A. Yes, sir.

Q. And he had his Vicks inhaler tube in his right hand? A. Yes, sir.

Q. Now, as he came out of the car, you testified that he had his left door a little open?

A. The left door was open.

Q. And his right foot was a little out?

A. His left foot was out.

Q. And then as you approached him—is that right?—A. Yes, sir.

Q. —you testified yesterday, did you not, that you instructed—I may be corrected—that Officer



(Testimony of William K. Wells.)

Abbey used a blackjack to open Cavness' hand, is that right?

A. To force his hand open.

Q. You saw that yourself? A. Yes, sir.

Q. And that it was the left hand that Officer Abbey struck with his blackjack, did he not?

A. Yes, sir.

Q. Well, did he also have another Vicks inhaler in his [129] left hand?

A. He had a piece of the Vicks inhaler tube in his left hand.

Q. You didn't say that yesterday, did you?

A. I think in my testimony I testified where he, where his left hand—we had him down, stomach down on the ground, with his left hand this way (indicating).

Q. You never said that he had a Vicks inhaler tube in his left hand, did you? A. Well—

Mr. Hoddick: Are you asking him that, Mr. Miho?

A. —Mr. Miho, I misunderstood your question. I meant that we forced his left hand open with a blackjack.

Q. And what came out of it?

A. I didn't see anything come out of it.

Q. You were right there, weren't you, a few feet away?

A. I was right there, but then Abbey—what do you call?—forced his left hand and he got up and I got up.

(Testimony of William K. Wells.)

Q. But you didn't see anything fall out, did you?  
A. No.

Q. His left hand came open?

A. It was forced open.

Q. It was open?           A. It came open.

Q. But you didn't see anything fall out? [130]

A. It was forced open and he had his hand like this (indicating).

Q. You saw his hand opened?

A. Opened this way.

Q. Nothing came out of it?

A. I didn't see it.

Q. All right. But you were right there a few feet away?  
A. I was right there.

Q. Do you recall who it was that stepped on Cavness' hand with his foot?

A. I didn't see that.

Q. You didn't see that? Do you remember seeing his hand bruised later on when you took him to the emergency hospital?           A. No, sir.

Q. You don't remember that?

A. I don't recall that.

Q. Well, you don't recall it?

A. No, sir.

Q. It could have happened?

A. It could have.

Q. Do you remember his bruises on his face, black and blue marks on his face? He is a dark man but did you see any bruise marks on his face?

A. The only bruised marks I saw is that cut on his mouth.

(Testimony of William K. Wells.)

Q. That was a swollen open cut on his mouth, is that right?      A. It was a cut, yes.

Q. It was cut from the outside clear to the inside, was it not?

A. I don't now how deep it was.

Q. Well, didn't you take an interest to see how badly injured your bleeding defendant was, you, the man in charge? Weren't you interested?

A. I looked from the outside and saw the cut. I asked him if he was all right. He said yes.

Q. Will you come close and look at that lip, this side? Do you recall anything now about whether he was cut up on the inside or not?

A. I don't recall looking into his mouth.

Q. You don't recall?      A. No, sir.

Q. You never looked in his mouth?

A. No, sir.

Q. And you say he got that injury on his mouth because he was trying to bite a Vicks inhaler?

A. That is the best of my recollection.

Q. Would you deny that he received a blow in his face [132] with a fist, somebody's fist, as well as a blow on his lips at any time during that struggle? Would you deny that somebody hit him on his face?

A. I didn't see anyone strike him.

Q. Would you deny that he was struck? I am asking you whether you would deny that he was struck?

A. I said I didn't see anyone strike him.

(Testimony of William K. Wells.)

Q. I still ask you, would you deny that he was struck on his face by someone?

A. I said I didn't see anyone strike him.

Q. Mr. Wells, under oath you cannot deny that somebody might have struck him on his face, can you?

A. I didn't see anything. Like I told you, when I had him around the waist here, how could I see if someone hit him on the back. I haven't got eyes in the back of my head.

Q. But you recall a lot of other things, do you not, in detail? A. Yes, sir.

Q. But that part you don't remember?

A. I didn't see it.

Q. And you wouldn't deny or refuse to deny that?

A. I didn't see anybody strike him.

Q. But you were there throughout the struggle?

A. I was there, yes, sir. [133]

Q. Now, when he first fell down, as you say, on his knees as he came out of the car, at that time he was bleeding in the back of his head, was he not? A. No, sir.

Q. When did he begin to bleed?

A. I don't know.

Q. You don't know? A. No, sir.

Q. Well, how do you know whether he was bleeding the first time or not?

A. He could have bled the first time when he fell down.

(Testimony of William K. Wells.)

Q. He could have? A. Yes, sir.

Q. So you don't know actually?

A. When he got up I was trying to get the evidence from him. I was interested in that Vicks inhaler tube.

Q. And you didn't care what——

A. No, wait a minute. To take it away from his hand.

Q. I asked you, you didn't care how you got it, did you? You didn't care how you got it, did you? Answer the question.

A. I wasn't using force to try to get it from him.

Q. You were smart enough? You were trying to get somebody else to use force, weren't you?

A. I didn't advise anyone to use force on your defendant. [134]

Q. But you didn't stop anyone from using force and violence on this defendant, did you?

A. We didn't use any force on your defendant.

Q. Oh. Then will you explain——

A. We tried to subdue the defendant when he was trying to struggle with us, trying to get rid of the inhaler tube.

Q. You didn't use any force on him?

A. Holding his hand.

Q. I am asking you. You just stated you didn't use force.

A. I was trying to hold his hand. I wouldn't say that is force.

(Testimony of William K. Wells.)

Q. You just stated that you didn't use any force on him at all. You just tried to subdue him, is that right?      A. That's right.

Q. Well, if you didn't know who hit him, how do you know whether you used force or not?

A. I just told you that I didn't see anybody hit your defendant.

Q. Well, then, how do you know whether force was used on him or not if you didn't see so many things that caused this bleeding and caused this bloodshed?

Mr. Hoddick: Mr. Miho, are you through with the blackboard drawings? [135]

Mr. Miho: Yes.

Mr. Hoddick: I'd suggest that you take the stand again (to the witness).

The Court: Read the last question.

(The reporter read the last question.)

A. All I can testify is I didn't use any force on him.

Q. In other words, you are trying to protect your brother officers, is that right?

A. I am not trying to protect anybody.

Q. You are here to tell us the entire truth of what you saw happen?

A. That's right, sir. And I am telling the truth to the best of my knowledge.

Q. And the benefit of your 28 years' experience?

A. I am up here to tell the truth and nothing but the truth.



(Testimony of William K. Wells.)

Q. So help you God. Now, how does it happen, Mr. Wells, that if you were right there and you saw the defendant with this Vicks inhaler or something, something in his right hand and also something in his left hand, and these officers were helping you to get that something from his hand, that you did not see anything immediately after the struggle? Will you explain that?

A. Like I told you, I had a hold of his waist and my head was down this way (indicating). [136]

Q. But as an experienced, long-time experienced narcotics agent——

A. Yes, sir.

Q. After he was subdued, as you described yesterday, you must have looked around, didn't you?

A. No, sir.

Q. For the evidence that you struggled?

A. As soon as his hand opened, he immediately asked me to take him inside, which I did. Officer Abbey and Sousa stayed outside. I took the defendant immediately inside.

Q. Why did he ask you to take him inside?

A. I don't know.

Q. You don't know?           A. No, sir.

Q. Wasn't it then because he was groggy and hurt and sore and scared and bleeding? Wouldn't that have been the reason?

A. I don't know.

Mr. Hoddick: That's asking for a conclusion on the part of the witness.

The Court: He already answered, "I don't know."

(Testimony of William K. Wells.)

Q. In other words, you are saying that you didn't look around for this so-called evidence after the struggle? A. I did afterwards.

Q. Immediately after, I am talking about. [137]

A. Immediately after we subdued him. He asked me to take him inside. I took him inside and served the warrant on him. That's what I was interested in, serving the search warrant on him.

Q. I am asking you, Mr. Wells, from your 28 years' experience to get the continuity of the evidence in any case is very important, is it not?

A. Yes, sir.

Q. Is that right? A. Yes, sir.

A. And it is absolutely important to be as careful as you can to connect the evidence up with any person charged with any crime, is that right?

A. Yes, sir.

Q. You know that? A. Yes, sir.

Q. And yet in this case, after all this struggling, you did not look for this evidence, is that right? You just stated so in so many words.

A. I was interested in serving the search warrant on him first.

Q. You also admit that this defendant could never have run away from you people, is that right? A. He tried to.

Q. Even if he tried to, you new that he could never [138] get away from you people, is that right, from you and your brother officers?

A. That's right.

(Testimony of William K. Wells.)

Q. But you still felt you had to subdue him by force, is that right?

A. He struggled. He started struggling first.

Q. You stated yesterday he never lifted his hands at any time excepting for that first shoving, did you not? Didn't you say that yesterday?

A. You mean lift his hand to what, to hit us or what?

Q. To hit you people or shove you or knock you down or anything?

A. Well, he tried to get away from us and then trying to get a hold of that Vicks inhaler tube in his hand.

Q. So he did some struggling?

A. Well, it was quite a struggle there.

Q. After that first shoving did he take a blow at you, a poke at you?

A. He tried to run away from Officer Sousa and myself.

Q. Now, all of this evidence, if I remember your statement before the Commissioner and before this Court yesterday, all of this evidence upon which you based your case, was delivered to you by the specific officers at the vice squad in Honolulu and not at the scene, is that right?

A. Yes, sir, that's right. [139]

Q. You had never met Cavness in your life before this time, is that right?

A. I have seen him on many, many occasions on Smith Street in his barber shop, walking up and down.

(Testimony of William K. Wells.)

Q. But so far as you know, the Defendant had never known or met you in his life, is that right?

A. I think he knows who I am.

Q. I asked you whether you had ever met him.

A. I never met Mr. Cavness, no, sir.

Q. Now, Mr. Wells, who else has access to your strong box that you described yesterday where you keep your——

A. Just myself.

Q. If you are away on a trip or if you were ill or died tomorrow, who could get into the strong box?

A. Nobody.

The Court: Excuse me. It was of interest to me yesterday that he kept saying strong room.

The Witness: Strong room.

The Court: You talked about a strong room or a strong box?

The Witness: It is the name—what do you call?—the Bureau requested that we have a strong room where all our evidence is kept after it is seized.

Q. It is a complete room?

A. It is nine feet by six and is right up to the ceiling.

Q. No windows?

A. It has a window on the Waikiki side of the room with bars in it. That is at the Young Hotel, room 575, Alexander Young Building.

Q. In a transom?           A. No, sir.

Q. Just a window with bars in it?

A. Bars, yes, sir.

(Testimony of William K. Wells.)

Q. And what kind of a lock does it have?

A. I have a Yale lock and another big padlock with two big eyes with a rivet inside the door, something like an eye.

Q. How many times since you first put this, put all these in, put all this so-called evidence in, marked for identification "A" to "F" yesterday, since you placed it in, I believe you said you placed it in some time on July 22nd of this year——

A. I placed it on July 19th.

Q. Nineteenth? A. The first time.

Q. Well, since that date to the day before yesterday or yesterday, the day before yesterday, when you brought them out for presentation in court here, how many times have you been in that strong room?

A. That is from July 19th up to—I would say sometimes on an average of five times a week, and other times maybe three, four times a week.

Q. You go in there quite often every day?

A. I go in there because a lot of the drugs that are surrendered by drug stores and doctors after I seal it I place it in the strong room.

Q. And in this room you just leave it on different shelves, is that right?

A. I have at least six shelves there.

Q. And you are absolutely certain that nobody else has access to that strong room except you?

A. No, sir, because I am responsible, I am held responsible for anything missing in that strong room.

(Testimony of William K. Wells.)

Q. Where do you keep your keys?

A. Right on myself.

Q. Day and night?

A. Day and night, yes, sir.

Q. Have you got your badge with you by any chance today?      A. Yes, sir.

Q. Will you show it to us, from there? (Witness shows a badge) Is that the same badge you had that day?      A. Oh, yes.

Q. When you had this altercation with the Defendant? [142]      A. Yes, sir.

Q. And that's what you held in your hand?

A. Left hand.

Q. How did you hold it? (Witness indicates) You held it like that?      A. Yes, sir.

Q. And throughout the struggle you held it?

A. No, I first went down—someone—then I got it out of my pocket.

Q. How?

A. I automatically—what do you call it?—stuck it in my pocket.

Q. But when you grabbed Cavness you had that in your left hand and grabbed him at the same time?

A. When I grabbed Cavness I had also—what do you call it?—the search warrant. I grabbed his left hand and when we went down I stuck, I got the warrant in my right pants pocket—

Q. Oh, you did it right away? You put the one in one hand—



(Testimony of William K. Wells.)

A. It happened like that. (Indicating)

Q. Wasn't there a continuous struggle from the moment you grabbed hold of him?

A. When he came out of the car, Sergeant Sousa was in the back of me then. [143]

Q. Wasn't it a continuous struggle from the moment you first approached Cavness?

A. When he came out of the car, yes, sir.

Q. There was no moment or let-up at any time until he was subdued, is that right?

A. That's right.

Q. But you had time to put your search warrant in your pocket and your badge in your other pocket?

A. Yes, sir.

The Court: The first time on that first fall, so to speak, I heard the pronoun "we." I don't know what that means.

Q. Yes, will you explain that? The first time when Cavness fell down you spoke of "we."

A. Oh, that was Alfred Sousa and I. The Sergeant had a hold of him from his right in the back here.

Q. Well, didn't you state, didn't you state, make a statement before the U. S. Commissioner that Officer Sousa or Shaffer, one of the two, I don't remember exactly who, did you state before the U. S. Commissioner that one of these officers, Sousa or Shaffer, reached into the car and grabbed Cavness from the car and pulled him out?

A. No, sir, I didn't make such statement.

(Testimony of William K. Wells.)

Q. You didn't make such a statement?

A. No, sir. [144]

Q. So that the only man who touched Cavness when he was in the car was you?

A. Myself, and when he was on his way out Officer Sousa.

The Court: Mr. Wells, did anybody except the Defendant fall down on that occasion that you were talking about when he was out of the car? Did you fall down?

The Witness: I was half-way down on my knees.

Q. I asked you yesterday when you grabbed his left hand, did that result in his being pulled out of the car, and your answer was, "I think so." You continued: "And then Mr. Cavness fell to the ground on his knees. We got him up." Who did you mean by "we" then?

A. Sergeant Alfred Sousa and I.

Q. "We got him up." Officer Sousa and you, you say? "And he tried to get away from us." That is still you and Sousa? A. Yes, sir.

Q. "To run towards the back of the——" You didn't finish that sentence.

A. That is in the back of the garage. That is towards, I would say, towards the sea.

Q. Towards the front of his car?

A. That's right.

Q. "Then Mr. Whitford came to our assistance and he [145] then fell to the ground again."

(Testimony of William K. Wells.)

A. That's right.

Q. You saw all that? A. Yes, sir.

Q. How did he fall to the ground when Whitford came to the scene? Tell us.

A. Well, I don't know how he fell.

Q. You were right there, weren't you?

A. I don't know how he fell.

Q. Did he stumble on anything or——

A. He could have. Or maybe he got, maybe one of the boys—Al Sousa was a little too close to him.

Q. But he fell, that is the main thing.

A. He fell.

Q. But he didn't hit his head on anything, you told us yesterday? A. That is right.

Q. In fact, you told us he didn't hit his head on anything at any time during the struggle, is that right?

A. To my recollection he didn't, no, sir.

Q. But he was bleeding in the back, that you remember? A. Yes, sir.

Q. "Now, he got up and then we were assisted by the other officers." Whom did you mean by the other officers? All of them? [146]

A. That's officers Shaffer, Sasaki, Abbey.

Q. Sasaki? A. That's the other three.

Q. And what did they do? What did you mean when you said "They came to our assistance"? What did you mean by that?

A. We all struggled with the Defendant then.

Q. Nine of you, all nine of you?

(Testimony of William K. Wells.)

A. There wasn't nine.

Q. How many?

A. I think there were six of us.

Q. Oh, the others hadn't come yet?

A. No, sir.

Q. They were still on their way? Or they were watching as watchmen to the possible entrances of escape, is that right? Is that what you are trying to tell us?

A. You mean the other four officers?

Q. Yes.

A. They were about, I would say, about a half mile away.

Q. They were at the Waikiki Fire Station or they hadn't arrived at the scene? A. No, sir.

Q. And who were there at the Waikiki Fire station? A. Officers Ferry—— [147]

Q. Yes? A. ——Pestano——

Q. Yes? A. ——Oliver Roberts——

Q. Yes? A. ——and Marcotte.

Q. You never mentioned Officer Roberts yesterday, did you?

A. I don't remember if I didn't mention him or not.

Q. Officer Roberts and the others came to the scene later on? A. Later, yes, sir.

Q. Roberts? And they all came together with Roberts to the scene? A. Yes, sir.

Q. After the struggle was all over?

A. Yes, sir.

(Testimony of William K. Wells.)

Q. After the struggle was all over?

A. Yes, sir.

Q. Then you continued, "He got up and then we were assisted by the other officers." And by that you mean Shaffer, Abbey, Sasaki and Whitford?

A. You mean the second time?

Q. Yes.

A. The second time Whitford was assisting us, and the [148] other three came to our assistance.

Q. First you had Sousa assisting you?

A. Yes.

Q. Then he fell down and then he fell down again? At that time Whitford came to your assistance?

A. That's right.

Q. So Whitford was helping you and Sousa subdue Cavness—right?

A. Yes, sir.

Q. Three of you? And when he got up the second time you got Shaffer, Abbey and Sasaki to help you?

A. Yes, sir.

Q. So that there were six of you?

A. Six, yes, sir.

Q. And when he tried to get up the second time, all six of you were trying to subdue him?

A. That's right.

Q. And when you stated, "We struggled there for about three or four minutes."

A. About that.

Q. Three or four minutes?

A. Yes, sir.

Q. Now, you know how long three or four minutes is, do you not? That is not a wild guess?

(Testimony of William K. Wells.)

A. Approximately three or four minutes. It could be [149] less.

Q. And all that time, so far as I recollect, your statements up to now, certainly the last time,—I mean the second time—Cavness did not, after struggling, shoving you the first time, Cavness did not hit back or struggle with you at all, is that right?

A. The only thing he tried to do is to get away from us.

Q. That's all.           A. Yes, sir.

Q. "Then we finally got him down on his stomach and I had a hold of his left hand, by his left wrist I would say, and Mr. Whitford had his right hand, and I heard Mr. Whitford—they were trying to get his hand open." Who do you mean by "they"? All of them?

A. I think it was Whitford and Abbey.

Q. "And they couldn't. So Abbey struck Mr. Cavness' hand several times and it opened." But later on you said he struck him, in my cross-examination, that Abbey struck Cavness with his blackjack—right?

A. I said blackjack. That's what he used on the top of his wrist.

Q. Do you remember saying also that "I had Mr. Abbey strike Mr. Cavness' left hand to open it"? "I had Mr. Abbey——" [150]

A. I asked Abbey to try to force his hand open. He couldn't. And then he hit it with the blackjack.



(Testimony of William K. Wells.)

Q. Well, you made a statement that "I had Mr. Abbey strike Mr. Cavness."

A. That's right. I said "I," yes, sir.

The Court: Mr. Wells, don't talk while the question is being asked. Wait until it is finished.

The Witness: I'm sorry, your Honor.

Q. Mr. Wells, if I remember your testimony correctly, you have not mentioned Officer Pestano as being at any time in the struggle, is that correct?

A. That's right. He wasn't in the struggle, no, sir.

Q. When did he appear on the scene?

A. He appeared on the scene with the other officers. He was down in the——

Q. Fire station? A. Yes, sir.

Q. Now, the officers, other officers from the fire station came to the house or to the premises about how many minutes after you, after the struggle was all over, approximately? Five minutes? Ten minutes?

A. It could be anywhere from five to ten or fifteen minutes.

Q. Five, ten to fifteen minutes?

A. Approximately, yes, sir. [151]

Q. And they joined you after you were all in the house then, is that right? The struggle was all over and you immediately went to the house, you say?

A. If I remember correctly, they joined us when we came back outside again.

(Testimony of William K. Wells.)

Q. The second time? A. Yes, sir.

Q. You never stated at any time that Officer Pestano indicated that he had found anything at the premises, did you?

A. In my testimony?

Q. Yes.

A. If I remember correctly I—I don't recall, sir.

Q. You don't recall? A. No, sir.

Q. But who handed you what kind of evidence is quite important, is it not? A. Yes.

Q. But you don't remember, is that right?

A. I thought—I recall mentioning his name, that I received that.

Q. At the vice room?

A. Vice squad, yes, sir.

Q. But when he indicated he found any object of any importance at the scene, you don't remember?

A. Well, he told me that he found that in that sport [153] shirt, I would say removable closet in the rear room.

Q. What he found?

A. A Vicks inhaler tube with the inside broken off.

Q. He found it in the house of the Defendant?

A. Found it in a sport shirt, sport jacket, in the—it's what I call a removable closet, a big closet. You could shove it from one end to the other.

Q. You know whose sport shirt that was?

(Testimony of William K. Wells.)

A. At the time?

Q. You don't know, do you?

A. No, sir, I don't.

Q. You never asked Cavness if the sport shirt was his or somebody else's, did you?

A. When I started to question him down at the vice room, he told me that he didn't want to answer any question.

Q. I am talking about his home. You never asked him? A. No, sir.

Q. And yet you stated that every officer was instructed to report to you? A. That's right.

Q. And to search under your direction?

A. Before we left Mr. Cavness' home, I told Mr. Cavness that I was going to take him down to the vice squad office and question him in regards to all the evidence that was found in his house and premises. [153]

Q. And they all came to the vice squad and told you, I found this over there, I found this over there, I found this over there, is that right?

A. Well, whenever they found anything they called me, and Mr. Cavness was right there.

Q. All the time?

A. Well, that's my instructions to them, that whenever they found any evidence——

Q. But actually it didn't happen that way, did it?

A. Really happened that way, yes, sir.

Q. It really happened that way?

(Testimony of William K. Wells.)

A. Yes, sir.

Q. And Cavness was present whenever each officer found something and reported to you the findings?

A. I mean if they found anything, Mr. Cavness was not around, they were to call me and I'd take Mr. Cavness and show him exactly where.

Q. So that Mr. Cavness was not with any officer when each one went around searching the house, was he?

A. Only, well, he was in the back room when Officer Pestano found the inhaler tube.

Q. And where were you?

A. I was right near there. I think I was standing by the door there leading to the kitchen.

Q. And all this time Cavness had a towel and was [154] wiping his mouth and trying to stop his bleeding, both from his mouth and head?

A. I don't think he was bleeding.

Q. It stopped by that time?

A. I am quite sure.

Q. Later on you took him to the emergency hospital yourself?

A. No, sir, I didn't.

Q. One of the other officers under your instructions?

A. Yes, sir.

The Court: We will take our recess for the afternoon.

(A recess was taken at 3:00 p.m.)

(Testimony of William K. Wells.)

After Recess

The Court: You may continue, the Jury being present as well as the Defendant.

By Mr. Miho:

Q. Mr. Wells, yesterday you spoke something about having talked to Gerry Wilson, this informer, seven or eight times.

A. About that many times.

Q. And when was the last time that you talked to her before the search warrant was issued on July 12th, I believe that was issued?

A. On the 12th of July.

Q. When was the last time? That was the last time? A. Last time. [155]

Q. She was in your office at the time?

A. You mean the last time I talked to her prior to leaving the Territory?

Q. No, prior to the day you got the search warrant, the last time.

A. On the afternoon of the 12th. That's right. July 12th. Yes, sir.

Q. And when was the search warrant prepared?

A. It was prepared that morning.

Q. That morning? A. Typed out.

Q. Are you sure of that?

A. Well, it could have been about, I think it was around ten o'clock, ten or eleven.

Q. That morning? A. Yes, sir.

Q. July 12th? A. That's right.

(Testimony of William K. Wells.)

Q. When was the last time you talked to her prior to that time?

A. It could have been at least three or four days or two days prior to that.

Q. You don't know for sure?

A. Not sure what day.

Q. How did it happen that you were present when she [156] left the Territory? Did you want to make sure that she left the Territory?

Mr. Hoddick: I object to the question and also to any further questions by Mr. Miho concerning Gerry Wilson as not being proper cross-examination.

Mr. Miho: Testing his credibility.

Mr. Hoddick: It doesn't go to his credibility at all. It wasn't the subject of the cross-examination.

The Court: Direct examination.

Mr. Miho: Yes, I will check my records.

The Court: Well, anyway I have allowed you on that basis on cross-examination to ask these other questions. I will allow this one.

Mr. Miho: Will you answer it, please?

The Witness: May I have that again?

(The reporter read the last question.)

A. No, sir. I was down to the airport on an investigation.

Q. You just happened to run into her?

A. Just happened to see her walking towards the plane.

The Court: Mr. Wells,—may I interrupt?—you



(Testimony of William K. Wells.)

came to me this afternoon before court and stated you wanted to make a correction in your testimony?

The Witness: Well, your Honor, that wasn't brought out.

The Court: But you came to me? [157]

The Witness: Yes, sir.

The Court: What was it?

The Witness: The correction on the search warrant. Instead of the buy being on July 10, 1947, it was on July 7.

Mr. Miho: What happened on the 7th?

The Witness: The buy was made on July 7th instead of July 10th.

Mr. Hoddick: At least as to the information you received?

The Witness: No, sir. On the buy the informer made from the Defendant Cavness.

Mr. Miho: You mean the purchase that she allegedly made at the Defendant's home?

The Witness: That's right.

Mr. Miho: You wish to change that from the 10th to the 7th?

The Witness: That's right.

The Court: Wait a minute. Let's make sure you understand what he is saying. As I understand him, the affidavit and the search warrant recite the date of the alleged purchase by the informer as having been July 10th, 1949.

The Witness: 1949.

The Court: And Mr. Wells may also have testi-

(Testimony of William K. Wells.)

fied to that. But if he did, both his testimony and the affidavit [158] and search warrant are incorrect as to the date. He is now correcting the date to reflect that actually it occurred on July 7th.

The Witness: Seventh.

Mr. Hoddick: For purposes of making this correction fully, that is based on what she told you? You weren't there when she made the purchase on the 7th or the alleged purchase?

The Witness: No, sir. She told us it was made on the 7th.

Mr. Hoddick: All right.

The Witness: When it was typed out I overlooked the thing. Going over the report thoroughly this noon before I came over here I caught it. I immediately came over and told the Judge.

Q. (By Mr. Miho): Tell us how you caught it?

A. And I referred you to Mr. Hoddick. Going over the report thoroughly.

Q. Where is the report? Is it available in your office or in your person, on your person?

A. Yes, sir.

Q. Would you show it to us?

A. Just the part of the report, your Honor, or the whole report?

The Court: He is asking you a question. [159]

Mr. Hoddick: I object. I don't think Mr. Miho has any right or privilege to see the investigative report of this case. This is a confidential matter

(Testimony of William K. Wells.)

between Mr. Wells and the Government, in addition to which the report would be hearsay anyway.

The Court: What is the purpose?

Mr. Miho: Your Honor please, he is coming here on a very material point which is the basis of the search warrant, and an affidavit sworn to before a U. S. Commissioner and sworn to under oath that she, this affiant, Gerry Wilson made, did assert things on a certain date. That is under oath and it is presumed to be made under oath and therefore made correctly. Now, for Mr. Wells to come in, and he has also stated that he has prepared this himself, for him to come in at this stage when the Defendant is on trial and state from a certain report that he has that he caught it this noon, that that is an error, certainly I am entitled, your Honor please, under our laws to go into the facts, factual background as to how he happened to come to make such an error and to come to such a correct one, inasmuch as the record states that Gerry Wilson is not here herself to tell us the truth one way or the other.

The Court: The error is the important thing.

Mr. Hoddick: I don't think there is even a showing of any error, your Honor. There is a mere assumption from [160] Mr. Wells' report that she did not make a purchase on the 10th. On the other hand Mrs. Wilson signed an affidavit that she did.

The Court: You may on cross-examination delve into it to full extent, but on the present basis I see

(Testimony of William K. Wells.)

no occasion on the strength of it, or on the face of the objection made, to demand that the witness produce his investigative report. The important thing is that there is an error which he has freely admitted. How it came about, and so forth, you certainly can inquire into. At this stage I am not going to make him produce his report. I may later if it develops. But right at this point I can't see it.

Mr. Miho: May I note an exception, your Honor?

The Court: You certainly may.

Q. (By Mr. Miho): Whom did you discuss this case with since you took the stand yesterday, if anyone?

A. Mr. Hoddick.

Q. And who else?

A. That's all.

Q. You didn't talk to your other fellow officers?

A. No, sir.

Q. Not at all?

A. I talked to one of them but not the case. I was down with him at the police station for two hours to obtain [161] at least 40 pictures on another investigation, yes, sir.

The Court: You came in to see me this noon or rather at 1:30?

The Witness: Yes, sir. And I first caught it on my diary when I went back on my diary.

Q. You prepared that affidavit that Gerry Wilson signed, didn't you?

A. I prepared it in longhand and I had at least other affidavits on that same date.

(Testimony of William K. Wells.)

Q. But you prepared it in longhand?

A. In longhand. And then my clerk typed it when I asked her. She said she put it down exactly. So I myself made the error.

Q. And you also prepared the search warrant, didn't you?      A. Yes, sir.

Q. And that also has the same date?

A. Same date, yes, sir.

Q. And in your 28 years' experience you know how important dates are, especially when you are accusing somebody of having sold something illegally to someone else, is that right?

A. Yes, sir.

Q. You know how important the dates are?

A. Very important. I made an error. [162]

Mr. Hoddick: Your Honor, he is arguing with the witness.

The Court: Go ahead.

Q. (By Mr. Miho): Since you took the stand yesterday——      A. Yes, sir.

Q. ——you remember when you first took the stand yesterday, Mr. Hoddick asked you about this search warrant or I asked you about it and the dates came up many, many times, July 12th, July 10th, July 19th, July 22nd, do you remember?

A. Yes, sir.

Q. You didn't catch it then, did you?

A. No, sir.

Q. You had to go and check your reports and records?

(Testimony of William K. Wells.)

A. No, sir, I caught it when I checked my diary.

Q. Well, couldn't your diary also be mistaken? You are absolutely certain?

A. When I checked the diary and checked other forms—I mean I found she made the purchase on the 7th.

Q. You weren't there, were you?

A. No, sir.

Q. What entry in your diary stated that she made the purchase on the 7th? What in your diary stated that?

A. That I received the evidence from Officer Theodore Kinney.

Q. What evidence? [163]

A. The capsules. I mean the cocaine.

Mr. Miho: I move that that answer be stricken.

Mr. Hoddick: I object, your Honor. The witness answered the question that was asked him by Defense Counsel.

Mr. Miho: It is not responsive.

The Court: Actually the most the witness can say is that he believed it to be that. Whether it is or not is a chemical question. The Jury is so instructed.

Q. (By Mr. Miho): Anyway, you got some instructions from Officer Kinney, is that what you are trying to say? A. Yes, sir.

Q. That a certain party made a certain purchase? A. Yes, sir.



(Testimony of William K. Wells.)

Q. And that was on what date?

A. On July 7th.

Q. July 7th? And you put that down in a diary on July 7th; you put that down in a diary on July 7th?

A. Yes, sir.

Q. Do you keep a daily diary, Mr. Wells?

A. I do.

Q. In your office, your home, or where?

A. In my office.

Q. Your office is an open office?

A. What do you mean? [164]

Q. It is not like a strong room, your office?

A. No, sir.

Q. Anyone can walk in?

A. No, sir. We close the files every night. It is locked up.

Q. So that your diary is kept in a locked room, locked portion of your room?

A. Yes, sir.

Q. So that other people cannot see it? But you keep a diary, a daily diary?

A. Yes.

Q. Of anything, of everything important?

A. Well, everything that I remember.

Q. What else did you put in the diary about Gerry Wilson?

Mr. Hoddick: I will object to that question, your Honor. It doesn't have anything at all to do with this case.

The Court: What relevancy has that to the error?

Mr. Miho: I will withdraw that. I thought it

(Testimony of William K. Wells.)

was very material to this point because he stated that Gerry Wilson has made a mistake in her statement to him.

The Court: His testimony is that he made the mistake. Now, you can probe into how he made it and why he made it, and so forth, and the effect of it to your heart's content, but let's stick to that.

Q. And the first time you came across this error from July up to the time of this trial, the first time you came across and caught this error was today at noon?

A. Yes, sir.

Q. And prior to that time what was prepared by you as to the date July 10th you thought it was the correct date?

A. Yes, sir.

Q. Now, before you came, before this case came on for trial, you had many, many, in fact, almost daily conversations with your brother officers who were involved in this case, is that right?

A. Before——

Q. Before we started this case.

A. I think we just had a conference with Mr. Hoddick once and on another occasion.

Q. I am talking about your brother officers, Sousa, Whitford, Sasaki, Pestano and all the others, nine of the others. You were hanging around with them almost every day, weren't you? You did, anyway?

A. Every night I am out with them.

Q. Every night you are out with them?

A. With Officer Sousa, Lieutenant Botelho, and maybe with Officer Marcotte, and Shaffer.

(Testimony of William K. Wells.)

Q. And you say you never discussed it except once, this case, with them? [166]

A. Oh, I thought you meant with the District Attorney.

Q. I said——

A. We discussed it on numerous occasions.

Q. Numerous occasions? A. Yes, sir.

Q. And, in fact, before you start a case you go over everything that the case is going to be tried on? You go over the evidence with not only Mr. Hoddick but you yourself review everything, don't you? A. That's right.

Q. And in your preparation for any case a date is all important, dates of events are all important, are they not? A. Yes, sir.

Q. And from your 28 years' experience you know how important and the reason of its importance, do you not? A. Yes, sir.

Q. Now, will you explain to us how it was that you happened to make this mistake from the 7th to the 10th, the two papers?

A. I can't tell you how the mistake was made. When I wrote it out in longhand I had the girl type it. And I asked her prior to coming here if the mistake was made by her and she said she typed down exactly what I wrote in my longhand. So I must have been the one that made the error.

Q. Yes, but you put it at that time down from some [167] other evidence or some other piece of paper that you have, didn't you?

(Testimony of William K. Wells.)

A. I had so much to do that day, Mr. Miho, and I just made the mistake.

Q. May I ask you, have you ever in your 28 years' experience as an officer made a similar mistake?      A. The first one.

Q. This is your first one?

A. First one, and I am very, very sorry about it. And I immediately came over here to see the Judge and——

Q. Now, you were present, you told me, when Gerry Wilson came to your office and she read this affidavit that you prepared?      A. Yes, sir.

Q. And you were present when she testified under oath before Judge Steiner when you got the search warrant on the strength of that affidavit of Gerry Wilson?      A. Yes, sir.

Q. Right?      A. Yes, sir.

Q. And you must have read the affidavit word for word before she signed it?

A. Before she signed that she—we also went over two other search warrants.

Q. I asked you a simple question. [168]

The Court: Answer the question, Mr. Wells. Read it.

(The reporter read the last question.)

A. Yes, sir.

Q. It wasn't one of those blank affidavits that sometimes I understand people sign because they are busy?

(Testimony of William K. Wells.)

Mr. Hoddick: I object.

A. I don't sign any blank affidavits.

Mr. Miho: It is a very clear question, if your Honor please. I have every right to ask him that.

Mr. Hoddick: This is not proper cross-examination. The subject is the making of the affidavit by Gerry Wilson, or anything else pertaining to the formulation of the search warrant. It was not gone into on direct examination. The search warrant will speak for itself.

The Court: Well, this bears on the error. But there is confusion here. Mr. Wells didn't sign the affidavit. He may have, as he said, read it before somebody else signed it. But you have got the thing twisted in your question there to the effect, to the inference that he signed the affidavit. Let's keep it straight as to who is doing what and why.

Mr. Hoddick: Your Honor, even on the question of error I don't think it is the proper subject for examination at this time. There is no——

The Court: Maybe it isn't, but your objection is overruled. Go ahead. [169]

Mr. Miho: Would you answer the question?

The Court: Let's get the question clear. I don't understand it.

Mr. Miho: I will reframe it.

The Court: Please.

Q. You prepared the affidavit that Gerry Wilson signed? A. Yes, sir.

Q. You prepared the search warrant that Judge Steiner signed? A. Yes, sir.

(Testimony of William K. Wells.)

Q. Gerry Wilson was in your office before she signed anything?      A. Right.

Q. And before she signed, before she signed this affidavit upon which the search warrant was based, you must have read that affidavit word for word.

A. I told her to read it and she read it and she said, "It's O.K."

Q. Well, did you yourself read it?

A. I read it, yes, sir.

Q. And then you asked her to read it?

A. Yes, sir.

The Court: Did you read it before it was signed or after?

The Witness: I read it, your Honor, immediately after [170] the girl got through typing it.

Q. Where did she sign that affidavit, in your office?

A. Right from, in my office, yes, sir.

Q. And that was before Judge Steiner came?

A. No, sir, she signed it in the presence of Judge Steiner. He is the U. S. Commissioner.

Q. And then the warrant was signed at the same time by Judge Steiner?

A. Yes, sir. She signed the affidavit first.

Q. Did she also read or did you give her an opportunity to read the search warrant?

A. I gave her the search warrant, the affidavit and search warrant to read, yes, sir.

Q. And you saw her actually read it?

A. Yes, sir.



(Testimony of William K. Wells.)

Q. She didn't just casually glance at it?

A. Well, she read it. I handed it to her and asked her—what do you call it?—to read the affidavit and search warrant.

Q. Did you inform her that if anything in that affidavit was false that she could be sued for damages?

A. At that time?

Q. Yes. Or at any time?

A. When she—prior to her making the buy I told her—what do you call?—that if she would make a buy, we will say, [171] from Mr. Cavness, that is to be so, that is to be from Mr. Cavness or where, from his premises or the barbershop down on Smith Street—

Q. Do you know, Mr. Wells, that anyone who signs a false affidavit not only commits perjury but can be sued for damages?

Mr. Hoddick: Objection, your Honor. Mr. Wells is hardly qualified to state what the law is.

The Court: Sustained.

Q. (By Mr. Miho): In any event, Mr. Wells, you knew how important an affidavit was?

A. Yes.

Q. You knew how important the dates were?

A. Yes, sir.

Q. And yet you say that out of a blank for some reason because you were busy or something you put a wrong date on the affidavit?

A. Evidently it was my error.

Q. You don't know how that error came about?

A. No, sir, I don't.

(Testimony of William K. Wells.)

Q. You have no explanation?

A. No explanation, no, sir.

Q. And this affidavit was made how many days after the alleged purchase that Gerry Wilson made of any narcotics? [172] I will use the word "narcotics," which she states she bought from Cavness. How many days?

A. That affidavit was made on the morning of the 12th.

Q. So if she made a purchase, as you now state, on the 7th——

A. Yes, sir.

Q. ——it was five days or so?

A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And you had talked to her at least twice before the 12th? A. Yes, sir.

Q. And prior to that last two times you had talked to her seven or eight times?

A. Yes, sir.

Q. Within a space of a few weeks?

A. About that time.

Q. Why was it necessary to talk to her so often, nine or ten times in the space of three or four weeks before she finally signed something?

A. We weren't talking to her only about your Defendant Cavness.

Q. Mr. Wells, may I ask you this question: for some reason you stated yesterday you wanted to get something on [173] Cavness; you said that. Right?

A. By that, I wanted to get something.

(Testimony of William K. Wells.)

Q. Get some evidence on him? You said something like that?

A. Yes, after I received prior information on what your Defendant was doing.

Q. Yes. So you wanted to get something on him?

A. Well, that's my work.

Q. And you kept this place under observation since June of this year—right?

A. Yes, sir, off and on.

Q. And you couldn't get anything on him, is that right? As good an officer as you were, you couldn't get anything on him up to July the 12th—right?

A. Well, we got a buy off him through the informer.

Q. Mr. Wells, would you please just stick to the question? You couldn't get anything on him from June up to July?

A. What do you mean by "get anything on him"?

Q. Anything to stick him with, as you people call it.

A. Well, we didn't arrest him prior to that.

Q. Well, anyway, how many months was it that you kept this place under observation?

A. I would say a couple of months.

Q. A couple of months? Finally you got hold of an [174] informer?

A. I didn't get hold of an informer. It was a police informer.

(Testimony of William K. Wells.)

Q. Somebody gave you an informer?

A. Didn't give it to me.

Q. Somebody told you about an informer?

A. They called me in to question the informer in regards to different suspects in town.

Q. How many suspects did you talk to during this nine or ten times that you had been conversing with Miss Gerry Wilson? How many other suspects were on your list that you wanted to get information on besides Cavness?

Mr. Hoddick: We seem to be going pretty far afield.

Mr. Miho: On his recollection of the errors, to explain how it came about if he had 10 or 12 or 15 other defendants that he was trying to question——

Mr. Hoddick: We are not trying to question 10 or 15.

The Court: You say it is relevant to the error?

Mr. Miho: Yes, your Honor please.

The Court: All right. I can't follow it. I can't quite follow it, but go ahead. You understand the question?

Q. You cannot answer that question, can you?

A. I am thinking how many suspects I questioned here——

Q. If you brought your diary into court, and any other reports you have during that two-month period, you wouldn't [175] have more than two or three at the most of suspects that you were work-

(Testimony of William K. Wells.)

ing on at that time, on narcotics, is that right?

A. We were working on the big ones at that time.

Q. But not more than two or three?

A. The big ones. I think a little more than that, maybe.

Q. So that it wasn't the number of suspects that got you side-tracked on the dates, is that right?

A. I just made an error. How I made it I don't recall how.

Q. Do you have any kind of a report on the conversations or interviews you had with this Gerry Wilson as to Cavness? A. No, sir.

Q. You don't have any notations in the diary?

A. No, sir.

Q. You don't? Well, didn't you just state that you have the date 7th in your diary and that is where you found your error?

A. Yes, sir. Just a purchase. But I don't put down in my diary what conversation she or information she gives me about Mr. Cavness.

Q. What did you put down on the 7th?

A. Received the evidence from Sergeant Kinney, purchase [176] made from Mr. Cavness.

Q. You did not in any way check the truth or veracity or credibility of this informer of yours at any time, did you, the reliability of her statement or charges to Kinney or yourself at any time, did you?

A. I found out a few days after I talked, when I first talked to her, that she knew a lot about the different suspects.

(Testimony of William K. Wells.)

Q. But she knew hardly anything about Cavness?  
A. She knew a lot about Cavness.

Q. She knew? Did you?  
A. Yes, sir.

Q. Did she testify whether she actually knew Cavness at any time by taking her in front of Cavness' barber shop or any place where he hangs out?

Mr. Hoddick: This is apaprently aside from the line of error, and I think it is an improper question.

The Court: What is the relevancy of that?

Mr. Miho: I will withdraw the question. That's all, your Honor.

The Court: Redirect?

Mr. Hoddick: No redirect, your Honor.

The Court: You are excused.

(Witness excused.)

The Court: Next witness. [177]

Mr. Hoddick: Mr. Shaffer, please.

Mr. Miho: If your Honor please, at this time while we are waiting, may I be permitted to add further grounds to the written motion that we have so far filed; the further grounds on the incorrectness of the dates charged in the affidavit and in the search warrant, your Honor.

The Court: Yes.

Mr. Hoddick: May it please the Court, I would object to that amendment, those amended grounds. There is no showing that that is an incorrect date. If you will examine the affidavit, it states that she made a purchahse on July 10th; that she also madé



purchases during June and in July. Now, she may have made another purchase on July 7th. That Mr. Wells testified to.

The Court: We will argue that when we come to it. But he wishes to add that as a ground of his motion to suppress. It may be added and we will argue it when, as and if we come to it.

PAUL SHAFFER,

a witness on behalf of the Plaintiff, being duly sworn, testified as follows:

Direct Examination

The Court: Will you please state your name, age, residence, occupation and citizenship?

The Witness: Paul Shaffer. [178]

The Court: Age?

The Witness: Thirty-three.

The Court: Residence?

The Witness: House 137, New Mill Camp Aiea.

The Court: Occupation?

The Witness: Police Officer, Honolulu Police Department.

The Court: And you are a citizen of the United States?

The Witness: Yes, sir.

The Court: Only?

The Witness: Yes, sir.

The Court: Take the witness.

(Testimony of Paul Shaffer.)

By Mr. Hoddick:

Q. Mr. Shaffer, how long have you been with the Honolulu Police Department?

A. Since the latter part of 1941.

Q. And what division, to what division of the Police Department are you attached?

A. At present I am assigned to the vice division.

Q. And how long have you been assigned to the vice division?

A. Since about June.

Q. This year?

A. Yes, sir.

Q. I call your attention to July 19, 1949, and ask if you assisted Mr. Wells in any of his work on that date? [179]

A. Yes, sir, I did.

Q. And what was the locale in which you rendered this assistance? Where did you render this assistance to Mr. Wells?

A. That was down in Waikiki area on Leahi Avenue.

Q. Do you remember the address?

A. I believe it was 3811.

Q. Will you describe in your own words what occurred when you first went to Mr. Wells' assistance and what was involved?

A. You mean from the beginning, from the beginning?

Q. That's right.

A. Well, that day——

Q. Just state things that you know of your own knowledge.

(Testimony of Paul Shaffer.)

A. Yes, sir. That day I was working under Sergeant Sousa and under Captain Whitford, who is captain of the vice division. And my orders then were to go along with Sergeant Sousa and Captain Whitford and Mr. Wells on that date; we went down to the Waikiki Fire Station in the afternoon, and from there we went to Officer Abbey's house. We stayed at Officer Abbey's house from—from his parlor, from his front room we could look across the street and see Cavness' house from that location. We sat there and waited, and it was about 2:45 a taxi cab drew up to Mr. Cavness' house, whose [180] address I believe the number is 3811, and a woman got out of the taxi cab and went into Cavness' house. The woman was identified by Sergeant Sousa as Mary Ryan. She stayed in there and later on she came out, got into the taxi; then the taxi drove back towards Honolulu. Then later on Cavness and a colored lady came out of the house and walked out of the yard and Cavness then looked in his mail box, stood around and went back into the house, and the colored lady walked away down the street. She was walking towards the Koko Head side. Then Cavness got in his car and drove away from his address. That was about approximately five, I'd say it was around 5:40. Cavness drove back to his address and drove in the driveway.

Q. Mr. Shaffer, before you go any further there, to the best of your recollection what officers were in Abbey's house with you? Who was there with you?

(Testimony of Paul Shaffer.)

A. There was Captain Whitford, Sergeant Sousa, Sergeant Sasaki, myself, and Officer Abbey and Mr. Wells.

Q. Go ahead. Pardon the interruption.

A. When Cavness drove back into his driveway, Mr. Wells proceeded on, and the information I had at the time was that he had a warrant for Mr. Cavness on a narcotics charge. So Mr. Wells walked across to where Cavness was seated behind the steering wheel of his car, and Sergeant Sousa was directly, was after Mr. Wells, and the door was open when I last saw it. And I could see Mr. Wells approach Cavness, and it appeared to me that he was talking to him.

Mr. Miho: He was what?

A. Talking to Cavness. At this time my instructions were then to approach there and give any assistance if it was needed. So I ran across the street and dove through this hedge that is in front of Mr. Cavness' place.

Mr. Miho: Speak a little louder, please.

Mr. Hoddick: He wants you to speak a little louder.

A. I dove through the hedge. It is a sort of like a mock orange hedge. And landed in the front lawn of Cavness' house, and when I came up I saw this struggle going on between Mr. Wells and Cavness and Captain Whitford and Sergeant Sousa. So I jumped in and tried to help subdue Cavness. So this struggle, we just couldn't do very much

(Testimony of Paul Shaffer.)

about it. I mean we were trying to hold him and Mr. Wells yelled that he had it in his hand. So I was on the back of Cavness trying to put a choke hold on him, but I just couldn't apply it. He was too wiry. And everybody was trying to hold him down. He was just throwing us off. So he went down half way and then he had his right hand up to his mouth, and the shout then went up, "He is trying to swallow it." So then I tried more then to hang on to him, but he was throwing us around. And this struggle was taking place on the grass there. So finally he had his hand up to his mouth and you [182] could hear a cracking sound like he was chewing on something. We tried to grab his arm and finally we got him; we just piled on to him and his hand went out and when his hand went out I saw something. I could see some sort of color in his hand. He had some object in his hand, and then there was pieces that fell from the vicinity of his hand down towards the ground.

Q. What was the color of those pieces?

A. They appeared to be white.

Q. Large?

A. No, not too large. It happened just in a matter of a fraction of a second. Very hard to see exactly what it was. All I could see, it was just something fell. So then we finally got him down on his, laying down on his face, and were hanging on to him, and Officer Abbey forced his hand open and Captain Whitford got a piece of Vicks inhaler

(Testimony of Paul Shaffer.)

tube out of his hand. And then we put the handcuffs on him and got him to his feet, and Cavness wanted to go into the house and Mr. Wells and we took him into the house. Then a call went out that they found something out in the lawn.

Mr. Miho: Who said that?

A. I believe it was Officer Abbey. I don't know. They called for Mr. Wells. So we went out and Officer Abbey had a piece of Vicks inhaler tube that looked like capsules or pills what they were fastened to it. So I began looking [183] around in the grass in the same vicinity where the struggle took place and I found some of these capsules, too. They looked like pills or had white stuff inside of them. I also found some pieces of the white pieces of this Vicks inhaler tube. So after I found those I called Mr. Wells over and he said, "Possible narcotics." And I kept them until we returned to the police station where I turned them over to him. After we found these articles we went back into the house and conducted a complete and thorough search of the whole house. And in the bathroom Officer Marcotte by that time was at the scene; going through the bathroom there he found some empty capsules, gelatine capsules.

Mr. Miho: Your Honor, I object to it unless a better foundation is laid.

The Court: Just a minute. You can only testify as to what you know of your own knowledge. That testimony just given about what Officer Marcotte



(Testimony of Paul Shaffer.)

did or found in the house on this occasion is stricken. Pick it up. As a matter of fact, it is about one minute to four. I think we will stop here for the day and pick it up at nine o'clock in the morning.

(The Court adjourned at 4:00 p.m.) [184]

December 8, 1949

(The Court convened at 9:00 a.m.)

The Clerk: Criminal No. 10,256, United States of America versus Orestus Cavness, for further trial.

The Court: Are the parties ready?

Mr. Miho: We are ready for the Defendant.

Mr. Hoddick: Ready for the Plaintiff.

The Court: Note the presence of the Jury and of the Defendant.

### PAUL SHAFFER

a witness on behalf of the Plaintiff, having previously been sworn, resumed and testified further as follows:

#### Direct Examination

(Continued)

The Court: Mr. Shaffer, you are the same Mr. Shaffer who heretofore has testified under oath in this case?

The Witness: Yes, sir.

(Testimony of Paul Shaffer.)

The Court: I remind you that you are still under oath. You may continue.

By Mr. Hoddick:

Q. Mr. Shaffer, yesterday on direct examination you had related I think the finding of six capsules.

Mr. Miho: Your Honor please, I object to that. As far as my recollection goes, there is nothing in the record of his [185] finding anything.

The Court: That doesn't ring a bell in my memory either.

Mr. Hoddick: Perhaps I jumped ahead of the story.

Q. Mr. Shaffer, you were recounting what took place at 3811 Leahi Avenue on July 19, 1949. And now will you take up your story from the time that Mr. Cavness, Captain Whitford and Mr. Wells and I think some other officers went into the house? I believe you stayed outside.

The Court: I don't think that's very good either.

Q. Mr. Shaffer, will you take it up from the point where Mr. Cavness went into the house after the struggle?

A. After the struggle where Cavness was finally subdued and handcuffed, he requested to be taken into the house. Mr. Wells and myself took him inside and he sat on a chair, and while we were in there a shout went up outside that there was something found. Mr. Wells was summoned to come

(Testimony of Paul Shaffer.)

outside. I believe it was Officer Abbey. When we went out, Officer Abbey had in his hand a broken portion of what appeared to be part of a Vicks inhaler and adhered to the inside of that were two pills or capsules with some white substance inside which was assumed to be——

Mr. Miho: Just a moment. I move that any answer as to his opinion as to what it might be or what it might not be, that the witness be instructed not to state.

The Court: Very well. Unless you know actually what [186] it was, we are not interested in what you thought it was.

A. (Continuing): It was white, something white inside. I didn't take it apart or fooled around with it. It was shown to Mr. Wells and then Officer Abbey instructed by Mr. Wells to hold it. At the same time I began looking around the lawn and I found some of these pills and some broken pieces——

Q. Mr. Shaffer, what was the condition of the lawn where you made your search?

A. It was mowed. It was a level stretch of lawn, grass, and it was well-kept. It was in good condition. There was nothing else there where I found these pills or capsules with the white stuff inside of them, which I showed to Mr. Wells, and he in turn instructed me to keep them. Then when we returned to the police station they were turned over to him.

(Testimony of Paul Shaffer.)

Q. Mr. Shaffer, were these capsules scattered over a wide area?

A. Well, they seemed to be in an area—it wasn't too wide. I'd say it was approximately an area of about four feet square. After those things were found we went into the house, began searching the house. That's when Officer Marcotte came across a box of these empty pills. I saw them in his hand.

Mr. Miho: Just a moment, if your Honor please. Unless [187] a better proper foundation is laid, I move that answer be stricken as to what somebody else found.

The Court: He said he saw it.

Mr. Hoddick: I believe, your Honor, that is the point where we were yesterday.

The Court: It may go out. Let's clear it up so that there would be no ambiguity about it. The Jury is instructed to disregard that last answer.

Q. (By Mr. Hoddick): Mr. Shaffer, when you searched the house, did you make the search in anyone else's company?

A. Well, we were all working together.

Q. Did you make a search of the bathroom?

A. I was inside the bathroom.

Q. And who was there with you?

A. Officer Marcotte was in there.

Q. And both you and Marcotte were searching the bathroom? A. Yes.

Q. Now, did Officer Marcotte pick up anything in the bathroom?

(Testimony of Paul Shaffer.)

A. I saw he had a box of these empty pills, capsules, whatever they are.

Q. And did you see where he picked them up?

A. I didn't see him pick them up. [188]

Q. You just saw him there with a box of empty capsules? A. Yes.

Q. Well, proceed with your narrative. What happened next?

A. The search continued on. We were all over. I crawled up in the loft of the house and I didn't find anything else. Then we were in the back room and Officer Pestano was going through the clothes in the closet there and he pulled his hand out of one of the coats and there was an empty Vicks inhaler in his hand when he pulled it out of the coat. And he called Mr. Wells' attention to that. And he received the same instructions from Mr. Wells, to hang on to it until we got to the police station.

Q. Did he open up that Vicks inhaler in your presence?

A. Yes, but there was nothing inside of it.

Q. Will you describe the condition of the Vicks inhaler?

A. When you unscrew the base, that portion that has Vicks in it, that was missing. It was sort of like a stem. That was broken off of it. It was just a base and all it was was an empty tube.

Q. Proceed. What happened after that?

A. Well, after the search then we went back to

(Testimony of Paul Shaffer.)

the police station. I turned my evidence over to Mr. Wells.

Q. Now, from the time that you found these six capsules on the grass where the struggle had taken place to the time [189] that you turned them over to Mr. Wells, did you make any alterations in the capsules?

A. No, sir, I didn't fool with them at all.

Q. Any substitutions? A. No, sir.

Q. They were in the same condition as when you found them? A. Yes, sir.

Q. You say you went down to the police station?

A. Yes, sir.

Q. What happened down there?

A. I turned the evidence over and then kept on working. We had other work to do.

Mr. Hoddick: May I have just a moment of the Court's time?

The Court: Yes.

Mr. Hoddick: No further questions.

The Court: Cross-examination?

#### Cross-Examination

By Mr. Miho:

Q. Officer Shaffer, before you went to this house across the Defendant's house on Leahi Avenue and went into Officer Abbey's house across the street, who accompanied you?

The Court: I don't understand what that question means. Before he went into what house? [190]



(Testimony of Paul Shaffer.)

Mr. Miho: I will reframe the question.

Q. At the time you first went into Officer Abbey's house, when you first went there, who were with you?

A. As I went into Officer Abbey's house, is that what you mean?

Q. I will reframe it. Who and who were with you in Officer Abbey's house?

A. Inside of Officer Abbey's house?

Q. Yes, I said inside.

A. There was Mr. Wells, Officer Abbey, Sergeant Sousa, Sergeant Sasaki and myself.

Q. And where did you five first get together?

A. We had, we met at the Waikiki Fire Station. That's the one there on the Ala Wai and Kapahulu.

Q. And when you say "we", whom do you mean?

A. I was under instruction of Captain Whitford.

Q. Who else was there besides the five you named?

A. Well, Captain Whitford was also in the house, Officer Abbey's house, with us.

Q. You didn't mention Captain Whitford up to now, have you?

A. I did before when I gave my statement.

Q. But then Captain Whitford was actually with you in Officer Abbey's house?

A. Yes, he was. [191]

Q. And not at the Waikiki Fire Station?

A. And at the Waikiki Fire Station.

(Testimony of Paul Shaffer.)

Q. Well, when did Captain Whitford join you, if that is what you mean?

A. I was instructed to report to the vice office. That's where I first met Captain Whitford prior to going to the Waikiki Fire Station.

A. Answer the question. Did you understand my question? I asked you, when did Captain Whitford join you at Officer Abbey's house? Do you want that more clear?

A. Join me? I don't get that. He was inside the house when I entered the house.

Q. Who else was already in the house when you entered the house? Officer Abbey's house.

A. Mr. Wells.

Q. Who else? Was Roberts there?

A. Who?

Q. Officer Roberts.

A. Roberts? You mean Oliver Roberts?

Q. Yes.

Q. Yes. A. No, I didn't see him there.

Q. All right. Go on, if you can recall who else was there, already there in Officer Abbey's house when you went there?

A. I am trying to recollect. We made two trips. I [192] believe Sergeant Sousa was there, too.

Q. How about Officer Marcotte?

A. No, he wasn't there.

The Court: Speak louder.

A. He wasn't there.

Q. I want to get the names of the officers who

(Testimony of Paul Shaffer.)

were in Officer Abbey's house that you know of immediately prior to Mr. Wells leaving the house to raid the Defendant's home.

A. Immediately prior to the raid there was Mr. Wells, Captain Whitford, Sergeant Sousa, Sergeant Sasaki, Officer Abbey, and myself.

Q. Now, do you know who joined you about the time you reached the Defendant's house, you yourself reached that house, who joined you?

A. I didn't get into the Defendant's house until——

Q. Premises, the yard, let's say.

A. When I went into the premises Mr. Wells was there and Sergeant Sousa, Captain Whitford, and I suppose Officer Abbey and Sergeant Sasaki, and at the premises after I did; I didn't see them come on into the premises. I was already engaged in the struggle.

Q. Can you tell us whether all of the six officers you named, including yourself, left Officer Abbey's house about the same time? A. Yes. [193]

Q. You all left the same time?

A. Approximately the same time.

Q. And your arrangement, your plan, was to have Mr. Wells go to the Defendant first?

A. I don't know what the arrangement was. I just had my instructions to follow.

Q. To follow who?

A. I had my instructions from Captain Whitford that I was supposed to follow.

(Testimony of Paul Shaffer.)

Q. What were your instructions?

A. To assist Mr. Wells in serving a warrant.

Q. In serving the warrant? What else?

A. And then to assist in the search.

Q. What else? What other specific instructions did you have from Captain Whitford?

A. To be on the lookout for narcotics while conducting the search.

Q. By the way, do you know anyone by the name of Gerry Wilson?

Mr. Hoddick: Objection, as improper cross-examination.

Mr. Miho: Your Honor please, we have gone into Gerry Wilson and the statement is from Mr. Wells that Gerry Wilson is a vice squad personality, that he got this Gerry Wilson through the help of this vice squad.

The Court: This witness has not been questioned about [194] this person.

Mr. Miho: I will withdraw the question.

Q. In the course of your duties, Officer Shaffer, you came into contact with Mr. Wells quite often, is that right?

A. I met him since I have been in the vice division. I didn't know the gentleman prior to that time.

Q. And how long had you been assigned to help Mr. Wells so far as the Defendant Cavness was concerned?

A. Just that afternoon that we conducted the raid down there.

(Testimony of Paul Shaffer.)

Q. And Mr. Wells asked you and the others in the vice squad for help to try to get something on this Defendant some time prior to that?

A. I don't recall anything like that.

Q. So that the only time you discussed the Defendant Cavness at any time in your life with Mr. Wells was on the day of the raid?

A. As far as I recall, I believe so.

Q. Now, are you sure that the officers who preceded you into the Defendant's yard were Mr. Wells first—are you sure of that?

A. I am positive of that. Mr. Wells was first into the premises. He was the first one that approached Cavness.

Q. And Sousa was behind him or Abbey behind him? A. Sousa was in the rear of him. [195]

Q. And where was Abbey, behind Sousa?

A. I didn't—I don't recall the exact position at that time where Abbey was.

Q. But he was pretty close to Sousa and Wells, isn't that right? A. That I couldn't say.

Q. You couldn't say?

A. Because I was going through the hedge.

Q. And Officer Sasaki, what was his position?

A. At the time I went through the hedge, I believe, he was in the rear of me.

Q. Rear of you? A. I believe so.

Q. Well, who was in the front, who altogether were in the front of you?

A. As I told you before, Mr. Wells approached

(Testimony of Paul Shaffer.)

Cavness and Sousa was in the rear of Mr. Wells, and at that time I went through the hedge into the premises.

Q. Well, didn't you just state that there was somebody else who was with Mr. Wells ahead of you? Didn't you state that after Sousa was Whitford, Captain Whitford, your own superior officer, didn't you just say that? A. Just now?

Q. Yes, just now, just a few seconds ago, in answer to my question. [196]

A. I said Captain Whitford was in the house prior to the raid.

Mr. Miho: Mr. Reporter, will you please read that part of the question.

(The Reporter read the question and answer referred to.)

Q. You mentioned Whitford there as preceding, soon after Sousa, is that right?

A. I mentioned that Whitford was with Sousa and Mr. Wells when I was on the premises. When we approached them the struggle was already in progress.

Q. Well, I will ask you again. I want to get the picture of who was there ahead of you. You speak of struggle and all that. Now, you entered the premises at a certain time during this whole encounter, the yard of the Defendant. You entered there at a certain stage in this whole process?

A. Yes.



(Testimony of Paul Shaffer.)

Q. Now, when you entered the yard, the Defendant's yard, as you say, you dove through the hedge there; just before you dove through the hedge, through the Defendant's hedge, who was ahead of you besides Mr. Wells and Mr. Sousa?

A. Nobody ahead of me when I went through the hedge.

Q. You mean Mr. Wells wasn't there either and Mr. Sousa wasn't there either?

A. In the process of going right through the hedge I couldn't see anything but hedge in front of me. [197]

Q. I don't want to hedge the question and waste a lot of time, Mr. Shaffer. You stated you all left the house about the same time, Officer Abbey's house, didn't you?

A. Yes, approximately the same time.

Q. I am asking you a simple question. After you left Officer Abbey's house to raid the Defendant's premises, who preceded you into the Defendant's premises? That's all I am asking.

A. I told you that Mr. Wells went first. Sergeant Sousa was in the rear of him.

Q. Yes?

A. Captain Whitford was over to my side, to my left. Now, whether he was inside the premises at that time I don't know. I was going through the hedge.

Q. Will you come down to the blackboard there and tell me which side of that hedge you dove through, as you stated yesterday?

(Testimony of Paul Shaffer.)

The Court: Can you orient yourself to any of those diagrams? Explain the diagram.

Mr. Miho: This is the garage. I mean this is the yard, and this is the makai; here is the garage.

Mr. Hoddick: Excuse me. That is Mr. Miho's drawing.

Mr. Miho: Well, you can make your own drawing.

The Court: Well, the point is that you were the one that labelled that as a garage. Prior witnesses have not. [198] You are interested in the hedge. Show him the hedge.

A. This is the front of the house. This is the hedge. Here is the driveway into the house. This is the hedge. This is the hedge. (Indicating on blackboard.)

Q. Will you state, put a mark there where you dove through the hedge?

A. Approximately in this area. It may be a few feet either side. It was in that area there on the Kaimuki side of the driveway (Writing on blackboard.)

Q. I see. And from there, after you dove through the hedge—by the way, how tall are you, Officer Shaffer?

A. About six feet.

Q. How many pounds do you weigh?

A. Right now I weigh about 195.

Q. Did you weigh about that weight at the time of the raid, about the same weight?

A. Approximately the same, maybe a little less.

(Testimony of Paul Shaffer.)

Q. Are you a football player or a former football player?      A. I played football.

Q. So you know what it means when you say you dive?      A. Went head first.

Q. You went head first in there?      A. Yes.

Q. And then after you went in there head first, what [199] did you do next immediately after that, from that point on, from that "S" point that you marked, what did you do?

A. Well, I went through the hedge and I landed on my feet inside.

Q. Oh, you didn't touch your hands or anything?      A. No.

Q. But you did put your head down, is that right?

A. I leaped, just went right through it.

Q. Right through it? Did you tear your clothes?

A. No.

Q. Your suit on just like that?

A. Oh, no.

Q. Similar?

A. I was wearing my uniform.

Q. Or did you have your raiding costume like jungle fighters?

The Court: What?

Mr. Miho: Jungle fighter. I understand the vice squad has some uniforms like that.

Q. What kind of a uniform did you have on that day on this raid?

A. At that time I was wearing old clothes.

(Testimony of Paul Shaffer.)

Q. Old clothes? A. Yes.

Q By "old clothes", that you vice squad people use [200] when you go out on any raid, is that right? Dungarees?

A. I didn't get the first part of your question.

Q. When you say "old clothes," that's the clothes that you wear that are made out of materials such as the soldiers used in jungle training, similar clothes? That's what you mean?

A. I don't know. I buy all my clothes in the stores over here. There is nothing similar between them and jungle training outfits. I don't quite understand what you mean.

Q. All right. I will withdraw the question. You had old clothes on? A. Yes.

Q. The clothes weren't torn, though—right?

A. I didn't examine them at that time.

Q. You still got your clothes that you wore on that day?

The Court: Wait a minute. You mean before he went through the hedge or after, were they torn?

Mr. Miho: After going through the hedge, your Honor. A. I didn't notice it.

Q. Well, you stated just a moment ago, just a few seconds ago, that your clothes weren't torn, didn't you?

A. I said that they weren't torn, that I noticed.

Q. Then I asked you again and you said, no, I don't know, I didn't notice it, is that right? [201]

A. Well, I didn't feel any draft in my trousers

(Testimony of Paul Shaffer.)

and my shirt was still on me. So apparently they weren't torn.

Q. I see. After you dove through and landed on your feet through this orange, mock orange hedge, what did you do next from that point?

A. I looked towards the location where I last saw Mr. Wells and I saw they were struggling with Cavness.

Q. On which side of the house?

A. According to your diagram this would be in the driveway area.

Q. Makai-Koko Head?

A. Well, it would be towards Waikiki.

Q. Towards your left?

A. Yes, towards my left.

Q. You landed on your feet so you stood up, is that right?      A. Yes.

Q. You stood up and you stood there and took a look at the situation, is that what you did?

A. I didn't stand there. I was moving.

Q. Where did you move to?

A. In the direction where I last saw Mr. Wells and Sergeant Sousa.

Q. What did you have to do to get there?

A. I ran. [202]

Q. You ran?      A. That's right.

Q. And when you got there to the scene, what was going on?

A. They were trying to hold Cavness.

Q. Who do you mean by "they"?

(Testimony of Paul Shaffer.)

A. Mr. Wells, Sergeant Sousa, and Captain Whitford was there at that time.

Q. Where was Sasaki? A. I don't know.

Q. Where was Abbey?

A. I don't know at that exact moment. I don't know where they were.

Q. You didn't see them?

A. No, because I jumped on him.

Q. Then throughout the entire encounter, from the moment you joined the struggle, up to the moment Carness was finally subdued, you don't know anything about Abbey, Officer Abbey or Officer Sasaki then?

A. No, they came into the struggle after I got into it.

Q. After you got into it? A. Yes.

Q. And what were they doing?

A. They were trying to help us subdue him.

Q. Now, after, from the moment you entered into the struggle, you were right there at the scene, is that right? You were right there? You never moved away until after the Defendant was subdued, is that right? A. I was right there.

Q. Until he was subdued? A. Yes.

Q. And would you remember if anyone struck, blackjacked Carness on the back of his head or not, or did you see such a thing, such an awful thing?

A. I don't recall anything like that.

Q. Would you be able to deny that anyone black-jacked him on the back of his head?



(Testimony of Paul Shaffer.)

A. I don't recall anybody using that.

Q. I asked you, would you deny it here under oath that somebody blackjacked him on the back of his head? Would you deny it?

A. What do you mean "deny"?

Q. How long have you been an officer, Mr. Shaffer?

A. Quite a while.

Q. How many times have you appeared as a witness in court?

A. Not too often. This is the first time I have been in this Court.

Q. I asked you, how many times you appeared as a witness [204] in any court? I didn't say the Federal Court.

A. I never counted.

Q. It's been over two dozen times, hasn't it, at least, or maybe three dozen?

A. I don't know.

Q. Innumerable times, haven't you appeared as a witness in court?

A. Yes, innumerable times but I wasn't going by dozens.

Q. You have seen me before you as an attorney innumerable times, haven't you; many, many times, haven't you?

A. I think I did see you.

Q. And you still say you don't understand the question I asked you, whether you would deny under oath that a certain thing happened, that you don't understand that question?

A. I don't recall seeing——

The Court: No, wait a minute. That wasn't your

(Testimony of Paul Shaffer.)

question. The question was, You wouldn't deny that it did happen? Not that it did happen. You have got your question twisted.

Mr. Miho: I will ask him again.

The Court: You ask him again.

Q. Officer Shaffer, I am trying to make it as simple as possible. Will you deny that someone blackjacked Cavness on the back of his head?

A. I don't——

Mr. Hoddick: Pardon me. He is not competent to answer [205] that question.

The Court: Overruled. Go ahead.

A. I don't recall seeing, recall him being blackjacked.

Q. Was he blackjacked? Was the Defendant Cavness blackjacked by anyone?

A. I don't recall. I don't remember if he was or not.

Q. Will you deny here under oath that someone blackbacked Cavness on some part of his body?

A. I don't recall if they did or not.

Q. Then he might have been blackjacked, is that what you are trying to say?

A. I don't know if he was or not.

Q. He might have been?

A. I don't recall.

Q. You don't recall? But you were right there?

A. Yes.

Q. Is that right? A. Yes, that's right.

Q. You saw Cavness bleeding on the back of his head, you wouldn't deny that?

(Testimony of Paul Shaffer.)

A. Oh, there was blood on him.

Q. You know he was bleeding from his mouth, too, don't you?

A. Yes, his lip was cut. But I assume that that was done when he was biting that capsule. [206]

Q. Oh, trying to swallow it at the same time?

A. I don't know what he was trying to do.

Q. Who was it that had given him the choke hold that you or someone spoke of the other day?

A. I tried to get one on him but it didn't work.

Q. Did he swallow something?

A. He was trying to put something in his mouth, whatever he had in his right hand.

Q. So you were choking his throat?

A. I was trying to get it but I couldn't apply it properly. He was squirming around.

Q. By the way, did you have jiu jitsu training as a police officer?

A. A little of it. I never amounted to much as a jiu jitsu wrestler.

Q. Were you a wrestler at the same time?

A. No, never much.

Q. Have you been a prize fighter or amateur boxer in the prize ring?

A. No, never was.

Q. But you were trying to choke him with your arm, as you indicated?

A. Yes.

Q. And Cavness was trying to bite something in his mouth? [207]

A. Well, there was a gnashing of his teeth, and he had this thing in his mouth when I heard it;

(Testimony of Paul Shaffer.)

he had his hand in his mouth when I heard that.

Q. What hand? A. His right hand.

Q. Will you come here, Cavness? Then he had it like this, is that right, as you indicated? (Demonstrating with the Defendant.) He had it in his right hand; he was gnashing it, as you indicated, on the right side of his lip?

A. I didn't indicate on the right side. He had his hand to his mouth. Now, whether it was this side or that side, I was in the back of him applying, attempting to apply a hold on him.

Q. Oh, that is another part you don't recall, is that right? A. Recall what?

Q. What part of his mouth he was trying to bite it with, is that right?

A. I can't very well see his mouth from the back of his head.

Q. Well, you saw his right hand, didn't you? You made a motion.

A. The right hand was up like that. (Indicating.)

Q. Cavness put your hand to the mouth, is that the way it was? (To the Defendant.) Cavness, put your hand to [208] your mouth. Is that the way it was? A. I couldn't tell.

Q. You were in the back of him—right?

A. Yes.

Q. All right. Was it this way or not? (Demonstrating with Defendant.)

Mr. Hoddick: Turn him around, Mr. Miho. Maybe he can tell better.

(Testimony of Paul Shaffer.)

Q. (By Mr. Miho): Is that the way it was?

A. It's hard to tell. He was half-crouched and there was a bunch of other fellows on him at the same time. His hand was in the vicinity of his mouth in the front. I can't tell.

Q. Well, I will ask you, Officer Shaffer, was he trying to bite an object in his right hand and on the lefthand side of his mouth, is that what he was trying to do?

A. I don't think his hand was like that.

Q. Wasn't like that? Then it must have been on the other side, is that right?

A. No, it could have been in the middle.

Q. Oh, in the middle? A. Yes.

Q. In the middle? Put it in the middle there.

A. You see, he wasn't holding his hand steady at the [209] time.

Q. I see. And that was when he was on his knee?

A. His head down and he was in motion all the time, struggling.

Q. At that time he was bleeding already on the back of his head, is that right? Do you remember that?

A. I noticed after the struggle that there was blood, but at what time in the struggle that thing started to bleed I don't know.

Q. Do you remember a pool of blood on the ground there when you went to search for your evidence? Do you remember that?

(Testimony of Paul Shaffer.)

A. I didn't see any blood.

Q. You didn't see any blood? You didn't see any blood on the ground there, on the freshly-mowed lawn, ground, you didn't see any blood on the ground?

A. I don't recall.

Q. Would you deny that there was blood on the ground there; that if someone took the stand here under oath and said that there was blood on the ground, that he would be mistaken, would you say that?

A. I couldn't answer it that way. I don't recall now if there was blood on the grass. I know he had it on himself.

Q. But you found some pills you said, didn't you? [210]

A. Oh, yes, I remember that.

Q. How big are those pills? Indicate with your fingers. (Witness indicates.) One-eighth of an inch?

A. I don't know. I didn't measure them. Regular size.

Q. About the size of a small pea?

A. No, a little bigger than a small pea.

Q. Middle-sized pea?

A. I'd say a large-sized pea in an oblong shape.

Q. You found six of those on the ground?

A. Yes.

Q. But you didn't see a pool of blood, is that right?

A. I wasn't looking for blood.

Q. Oh, I see. And you are not sure whether at the time you put a choke hold or tried to grab hold



(Testimony of Paul Shaffer.)

of Cavness, as you indicated, whether he was already bleeding at that time or not, you don't recall?

A. I don't recall the exact instance he began to bleed.

Q. If he was bleeding, you would remember, wouldn't you, because you were in the back of him and your face would probably just about touch his blood with your face?

A. I had blood on my face. I guess I did touch him.

Q. So he must have been bleeding at that time?

A. He probably was.

Q. On the back of his head? [211]

A. I don't know where.

Q. Well, did you have blood on your hand from his mouth? You recall whether you had any blood on your hand from his mouth or not?

A. No, I don't recall.

Q. You don't recall? Did you have any blood on your hand at any time, on your hand?

A. I didn't get that question.

Q. Did you at any time notice any blood on your hand?

A. There could have been blood. I don't exactly recall. I know I washed my hands after the raid was done.

Q. You went into the house, the first thing you did was to wash your hands, one of the first things you did? A. We what?

Q. When you went into Cavness' house you washed your hands, is that right?

(Testimony of Paul Shaffer.)

A. No, I didn't wash them there.

Q. Where did you wash them?

A. At the police station.

Q. And the reason you washed it, you don't know whether it was because there was blood on your hands or not? You don't recall that? You don't recall that, like a lot of other things, you don't recall that part?

A. No, I don't. It could have been dirt. I mean, routing around the lawn there. [212]

Q. Did you have any blood on your clothes?

A. Yes, I had some on my shirt.

Q. The front of your shirt?

A. Yes. I think it was little bit on my back.

Q. Now, I just want to ask you this question as simply as possible, Officer Shaffer: Did you see Cavness hit his head on any object such as, any object other than a human object?

A. Well, I couldn't frankly say because the struggle began on the left side of the car. And coming alongside the car, we finally ended up on the law. It is possible he could have hit the car, I guess.

Q. So, so far as you know—I am not asking you of something that you didn't see or were not in a position to see—do you remember, Officer Shaffer, talking to Cavness; you were pretty kind and solicitous to Cavness after you all went into the house and took Cavness in and you were asking him how he felt and how was the bleeding and all that? Do you remember all that?

(Testimony of Paul Shaffer.)

A. No, I don't recall that.

Q. You recall talking to him in the bathroom, to Cavness in the bathroom, don't you? You took him into the house, you said?

A. With Mr. Wells.

Q. Yes. Don't you remember taking him into the bathroom [213] and talking to him in the bathroom? You don't recall that?

A. I don't recall taking him into the bathroom.

Q. Do you recall talking to him in the bathroom soon after you entered into the house, or is it one of those things you don't recall?

A. Maybe I did speak to him. I don't recall exactly if I did or not.

Q. You might have?

A. I could have spoken to him in the bathroom.

Q. Maybe I will remind you of something. Then you might remember. Do you remember telling him, "Cavness, I think you hit your head on a bumper of the car." And that's how he got hurt. Now, do you remember?

A. I don't remember saying anything like that.

Q. Would you deny that you said that to Cavness in his bathroom, "Cavness, you hit your head on a bumper, and that's how I think you got hurt on the back of your head?"

A. I don't recall saying anything like that. I don't even recall being in the bathroom.

Q. I am asking you. Might you have said such a thing? A. I couldn't recall.

(Testimony of Paul Shaffer.)

Q. It is a very simple question, Mr. Shaffer. You could have said such a thing? You might have said such a thing, is that right? You might have made such a statement to Cavness, isn't that right?

A. I may have. I don't recall. I might have. I don't recall.

Mr. Miho: Your Honor please, could he be instructed to answer the question, your Honor? It is a simple question. He said, "I don't recall." He is just trying to keep away from answering my simple question, your Honor please. I am merely asking him, "Couldn't you——"

The Court: It doesn't require a yes or no answer. He can answer as best he can. It depends on his recollection, as to whether he thinks he might have said so or not.

Q. Could you? A. What?

Q. You might have made such a statement to Cavness?

A. As I said, I don't recollect whether I did or not.

Q. But you recollect now that you were with Cavness in the bathrom and talked to him?

A. No, I don't recollect that.

Q. You don't recollect being in the bathroom with Cavness or talking to the Defendant Cavness in the bathroom at all? You don't recollect that at all?

A. No, I don't. The only thing I can remember about the bathroom is when Officer Marcotte had those pills in his hand.

(Testimony of Paul Shaffer.)

Q. In other words, you were concentrating so much on finding something that you forgot everything else, is that [215] what you are trying to tell us?

A. Well, I was very—I mean performing my duties in regards to the search.

Q. You took Cavness to the emergency hospital, didn't you, or you recall that?

A. I believe I did. I don't—

Q. You are not so sure of that either, is that right? You are not so sure of that, because you stated to Mr. Hoddick that you went directly to the police station to give your evidence to Mr. Wells?

A. I didn't say I went directly to the police station. I said I went to the police station.

Q. From the Defendant's home, is that right?

A. Yes, but I didn't say direct.

Q. So I am giving you a chance to correct your story. Did you or didn't you take Cavness to the emergency hospital from the house over there? You don't remember that?

A. Well, I was riding in the car. I think we did stop there.

Q. But you are not sure? You are not sure, is that what you are trying to tell us, whether you took the Defendant who was bleeding to the emergency hospital or not, just a few months ago, you don't remember whether you took him to the emergency hospital or not, is that what you are trying to tell us? [216]

The Court: Answer the question.

(Testimony of Paul Shaffer.)

A. No, I could have taken him up there.

Q. Why don't you state that you took him to the emergency hospital, Officer Shaffer, as an honorable officer should, to give us the whole truth of this thing? Didn't Officer Marcotte drive the car and you and Roberts got in the car and took Cavness to the emergency hospital? Why don't you give us a clear answer to this thing and on every question?

The Court: Let's have one question at a time, not six. One question at a time. Now, what is the question?

Q. Officer Shaffer, you went on a car, in a car that was driven by Officer Marcotte, do you remember that?      A. Yes, I recall that.

Q. Officer Roberts was with you and Marcotte, do you remember that?

A. I don't know if Roberts was in there.

Q. Do you still not recall that you took him to the hospital?

A. Yes, I recall now Marcotte was driving the car and we did stop at the emergency.

Q. What did you tell the Defendant on the way to the hospital?

A. I don't even recall speaking to the Defendant on the way to the hospital.

Q. You didn't talk to him about how he got hurt, fell [217] down and got hurt?

A. I don't recall talking to him about that. As a matter of fact, I think he was sitting in the rear of the car.



(Testimony of Paul Shaffer.)

Q. He had a towel in his hand, didn't he?

A. I don't know what he had in his hands.

Q. You don't recall those details? Go on. What did you talk——

A. After he was in the hospital, after we stopped there, it wasn't too long; then we went down to the station.

Q. You don't remember telling him repeatedly in a nice way that you have that he must have gotten hurt by falling down and hitting some object, you don't remember that?

A. I don't recall.

Q. You don't recall?

A. I don't recall making any conversation with him at all. I know I spoke to him several times but what the conversation was, I don't think was more than some of the things he was directing us in the house. I recall when we were searching——

Q. You spoke something about not seeing anyone blackjack the Defendant, is that right?

A. I don't recall.

Q. You stated, though, that you wouldn't deny that someone might have, or am I mistaken on that?

A. What was that?

Q. Someone might have blackjacked him, is that right?

A. Someone might have blackjacked him?

Q. Yes.           A. I don't know.

Q. You don't know? Were you there when Officer Abbey was struggling with the Defendant?

(Testimony of Paul Shaffer.)

A. Yes.

Q. What was Officer Abbey doing?

A. Forcing the Defendant's hand open.

Q. With what?

A. I believe he had an object in his hand.

Q. You don't know what it was, though?

A. I don't know whether it was a blackjack or something similar to it. I don't know. But the instruction was to open his hand and we had to use force to do it.

Q. Open his hand—who was it that casually said, I think he's got it in his hand? Do you remember such a statement that you made yesterday?

A. Somebody said, he's got it in his hand; watch his hand.

Q. Didn't you say that, if I am correct in my recollection, didn't you say that Mr. Wells stated that he's got it, that I think he's got it in his hand?

A. If you check back I don't think the word "think" [219] was in there.

Q. You are pretty sure of what you said yesterday? What did you say?

A. If I remember correctly, according to the record, Mr. Wells said, "Watch his hand, his right hand; he got it in his right hand."

Q. Did Mr. Wells say anything about his left hand? A. I don't know about that.

Q. And which hand was it that Officer Abbey was trying to open, right or left hand?

A. Right hand.

(Testimony of Paul Shaffer.)

Q. The right hand? Are you sure of that?

A. Yes.

Q. You saw that yourself? A. Yes.

Q. Right in front of you? A. Yes.

Q. So if anyone else were to say that Officer Abbey was trying to open his left hand, he would be mistaken and not you, is that right?

A. It was a hand sticking out on my right.

Q. You remember anyone stepping on Cavness' hands, right or left, stepping on any of his hands, either of his hands? A. Stepping on them?

Q. Yes, stepping on them like that. (Indicating.)

A. Oh, you mean stamping on them?

Q. Either standing on them or pressing it slowly, one of the two, which is it?

A. Officer Abbey was forcing his hand. He had to strike his hand to try to force it open.

Q. With an object? A. Yes.

Q. You didn't see anyone step on the Defendant's hand, then? A. No, I don't recall that.

Q. You don't recall that?

A. No. Somebody stepped on me. I had a bruise in my back the next day.

Q. Oh. Did you go to a masseur? A. No.

Q. And so you don't remmeber anyone stepping on Cavness's hands, you don't recall?

A. I don't recollect that, no.

Q. Now, after Officer Abbey—you were right there when Officer Abbey was trying to open his left or did you say the right hand? Right hand?

(Testimony of Paul Shaffer.)

A. Yes.

Q. Are you sure of that? A. Yes. [221]

Q. When Officer Abbey was trying to open his right hand, the Defendant's right hand, it did open, didn't it? A. The hand?

Q. Yes.

A. Yes, it opened. Captain Whitford took the broken inhaler tube out of his hand.

Q. He took it right then and there, Captain Whitford, is that right? A. That's right.

Q. You didn't say that to Mr. Hoddick in his direct examination, did you? A. Yes, I did.

Q. That he took it after Abbey opened his right hand or left hand?

A. I stated that Captain Whitford took the inhaler tube from his hand.

Q. Are you sure of that? A. Yes.

Q. And then what did Captain Whitford do or say?

A. That's when I was still hanging on to him.

Q. Why didn't Captain Whitford present that or call Mr Wells' attention to what he found during the struggle immediately after the struggle was over, do you remember? A. I believe——

Q. Do you remember why that happened? [222]

A. I believe Mr. Wells saw that himself.

Q. Oh, saw that himself? You were able to see what Mr. Wells was able to see, is that right? Is that what you are trying to tell us?

A. What?

(Testimony of Paul Shaffer.)

Q. You were in a position to be able to see what Mr. Wells was able to see, is that right?

A.. That's what I saw. I don't know what Mr. Wells saw.

Q. Didn't you just state that you believed that Mr. Wells saw that himself?

A. I said it is possible that Mr. Wells saw it, too.

Q. That is not one of those things you don't recollect, then? You recollect that Mr. Wells saw something?

A. I don't quite get that.

Q. Never mind. Then after he was subdued, you all went into the house. All right.

The Court: Before we go into the house, let's take our first recess.

(A recess was taken at 10 a.m.)

#### After Recess

The Court: Note the presence of the Jury and the Defendant. You may continue.

By Mr. Miho:

Q. Mr. Shaffer, didn't you state yesterday on the [223] direct examination by Mr. Hoddick that Abbey forced—I am trying to recall the exact words that you used—that Abbey forced the Defendant's hand open and picked up some pieces of Vicks inhaler?

A. I didn't say that.

Q. Didn't you say that yesterday?

A. Not all at one time.

Q. Not all in one sentence?

A. No.

(Testimony of Paul Shaffer.)

Q. You deny that you said that in one sentence?

A. That's right.

Q. You deny that? If you said it, it would be an error? It was not the truth?

A. It is not the way I meant it to be said.

Q. Meant it to be said? What you meant to be said was what you said today, is that what you are trying to tell us?

A. I think if you will check the record, I stated that Abbey forced his hand open. And then, after we were in the house, Abbey found a piece of the Vicks inhaler tube.

Q. You didn't say——

A. I think that's the way it is.

Q. You didn't say anything about Whitford picking anything out of the Defendant's hand?

A. Yes, I said that, yes. Captain Whitford recovered a tube from his hand. [224]

Q. From the Defendant's hand? A. Yes.

Q. In any event, what you are trying to say is that that is what actually happened, that Whitford got a piece of an inhaler tube out of the Defendant's hand? A. Yes.

Q. That is the truth?

A. To the best of my knowledge, it is.

Q. You saw that yourself with your own eyes?

A. Yes.

Q. And what did Abbey pick up, if anything?

A. Abbey found a piece of inhaler tube, a piece of it that had these two pills stuck to it.



(Testimony of Paul Shaffer.)

Q. Out of the Defendant's hand?

A. No, he found that—apparently I wasn't there—he said that he found it on the ground.

Q. So far as you know, you never saw Abbey pick up anything from your direct, own knowledge?

A. If I saw him pick up anything?

Q. Yes.

A. What do you mean "pick up anything"?

Q. Well, pick up. Let's see. Pick up something. That's what I mean.

A. No, I don't. I couldn't exactly say. He was assisting in the search and he picked up quite a few things. [225]

Q. Abbey did?           A. Yes.

Q. Abbey picked up?

A. He picked up something, moved it over here, look, put it back.

Q. And you were right there?

A. Well, that was inside the house.

Q. We are still outside, Mr. Shaffer.

A. Oh. I didn't actually see Abbey—I saw him have it in his hands, this small particle with the two pills.

Q. But you didn't see him pick up anything, is that right?           A. No.

Q. Is that right?           A. I don't believe I did.

Q. But you saw him force Cavness' hand open, that you saw?           A. Yes.

Q. He had something in his, Cavness had something in his right hand?

(Testimony of Paul Shaffer.)

A. He had his fist closed.

Q. And Abbey opened it? A. Yes.

Q. And Cavness opened his hand and with it picked up something from his hand? [226]

A. Yes.

Q. And what was that that Whitford picked up?

A. Similar to that.

Q. Something like this? A. Yes.

The Court: Speak louder, please.

Mr. Hoddick: May the record show that it was similar to a Vicks inhaler tube.

The Court: Is that correct?

Mr. Miho: Yes, your Honor.

The Court: All right.

Mr. Miho: Would you have any objection to this being introduced in evidence?

Mr. Hoddick: No objection. Do it on your own case, though.

Mr. Miho: There is no rule that says I cannot introduce it at any time.

The Court: You can't introduce evidence on cross-examination without permission.

Mr. Miho: Of the Court.

The Court: You are faced with an objection.

Mr. Miho: I will withhold it, then. Mr. Hoddick, would you have any objection if I kept on using this to try to make the story more clear?

Mr. Hoddick: No, if you, in phrasing your question, [227] will refer to it as a Vicks inhaler tube, so there won't be any question.

(Testimony of Paul Shaffer.)

Q. (By Mr. Miho): From this top part—is this the top part? A. A Vicks tube.

Q. That's what you mean by the tube? Try not to mumble your words, Mr. Shaffer.

A. This is part of the tube. There's another part that fits in here.

Q. Is that this part here? A. Yes.

Q. And which is the part that Cavness had in his hand?

A. About that much of it. (Indicating.)

Q. Which is the part that he had? Did he have the whole thing in his hand?

A. Well, it was broken. This top part here was broken. And all he had was what was left of it.

Q. I see. So he had, excepting for the top portion—indicating the top portion of this Vicks inhaler—except for the top portion which was broken, Cavness had his hand, had in his hand the rest of that Vicks inhaler, is that what you are trying to say, in his hand? A. Yes.

Q. That would be the screw-in part and the cover, is that right? [228] A. Yes.

Q. And it was screwed in like this?

A. Oh, yes, it was all together.

Q. All together? A. But, Mr. Miho,—

Q. Yes?

A. —when I saw the tube later on, this part here was cut off; this here wasn't there at all.

Q. Later on? A. After I saw the tube.

Q. When later on did you acquire that knowledge?

(Testimony of Paul Shaffer.)

A. Well, I saw that tube afterwards when Captain Whitford had it in his hands looking at it.

Q. In that portion that was broken off——

A. You could see in the end of it.

Q. And where was it?

A. Captain Whitford had it in his hand.

Q. At the scene?           A. Yes.

Q. How much of the inner portion was left?  
You mark it with a pencil.

A. I didn't see any of it. It was only the base of it.

Q. It was only the base?

A. I didn't see this part here.

Q. Well, how did the base stick to this without the [229] screw portion?

A. It had the threads on here.

Q. The thread was on?

A. Apparently so, because this part was in there. I didn't examine it. I just could see the broken end of it.

Q. Is that the portion you don't recall, whether that thread portion was on or not? You don't recall that?           A. I didn't check the thread.

Q. You saw it, didn't you? You saw it twice, didn't you, or three times?

A. Together like that.

Q. It was together? That you are sure of?

A. This end was broken off. You could see inside. Nothing was in it.

Q. But it was together, you are sure?

A. Yes.

(Testimony of Paul Shaffer.)

Q. Both at the scene and at the police station?

A. Police station, I don't recall if I looked at it then.

Q. You don't recall?

A. At the police station I turned my evidence in and I left.

Q. But you are sure that it was just as it is here excepting for the top portion which was broken off?

A. It was broken off and seemed to be broken at an [230] angle.

Q. At an angle?

A. Yes, it wasn't cut off sharp.

Q. Broken off?           A. Shattered.

Q. You didn't see the broken off portions on the scene of the struggle? You didn't see the broken off part at the scene of the struggle at any time yourself?           A. The broken off part?

Q. Or what could be the broken off part. Did you yourself see it at the scene of the struggle at any time?           A. Yes, I found four pieces of it.

Q. And when was that?

A. At the same time I found those pills, the six pills on the grass. And then there was small pieces of what appeared to be part of that. I picked those up, too.

Q. At the scene?           A. Yes.

Q. Now, indicate over here, tell me if I am correct—I will indicate. This is the two coconut trees. You remember that? (Referring to diagram on blackboard.)           A. I remember one of them.

(Testimony of Paul Shaffer.)

Q. You remember this one?           A. Yes.

Q. Now, with relation to the coconut tree and the driveway here, about where did you pick up the pieces you speak of?

A. May I go down there? (Referring to black-board.)

The Court: Yes.

A. This is the automobile here.

Q. Yes.

A. It was approximately in this area around here.

Q. Put a clear mark on there, "A" with a circle. (Witness writes on board.) You didn't see the blood at the same time you picked up——

A. I don't recall seeing the blood.

Q. Now, Officer Shaffer, didn't you see someone hit Cavness' head?           A. I don't recollect.

Q. You don't recollect?           A. No.

Q. How many times did you see Cavness fall or stumble?           A. I didn't count.

Q. Was it as many times as that——

A. Well, it was during the course of the struggle, he was half down and half up and was just throwing us around like we were a couple of bags of potatoes.

Q. You have served search warrants before, haven't you?           A. No, I haven't. [232]

Q. Oh, you have been with someone who served search warrants before?

A. Yes, I was on a couple of raids where they had warrants.



(Testimony of Paul Shaffer.)

Q. If you were in charge of this particular operation, would you have needed nine men to help you serve a search warrant to search a house?

Mr. Hoddick: Objection, your Honor. This witness is hardly qualified to pass as an expert on raiding parties or as to how many men would have been needed. I think the question is immaterial anyway as to whehter nine men are needed or not.

The Court: There is no foundation for it. He hasn't been qualified as one who has conducted a search. He simply said that he has been on prior raids where they had warrants. But I don't recall that he had ever been in charge so as to be in the category of an expert.

Q. (By Mr. Miho): Have you ever made raids in which you were in charge?

A. I don't recall ever making a raid where I was solely in charge. I assisted on raids.

Q. Well, in those raids that you assisted did you raid one person? I mean place where one person was present or many persons were present?

A. It was more than one person. [233]

Q. More than one person? And what was the number of policemen who accompanied you in that particular raid? A. Sometimes 20, 25.

Q. How many people were alleged to be there?

A. Well, it all depends. Sometimes five or six; sometimes 250. I am talking about gambling raids there, chicken fights, where you have numerous persons.

(Testimony of Paul Shaffer.)

Q. But have you ever assisted in a raid in which you knew beforehand that only one person was staying at this particular house wherein you used more than two persons, two officers?

A. Yes. We had a Filipino who went crazy with a knife. We used about eight fellows then.

Q. Outside of that? A. I don't recall.

Q. Just to make it clear in the record, Mr. Shaffer, so far as you know, you know of no one who hit Cavness on his head or on his face?

A. I don't recall that.

Q. You don't recall that? Do you recall the bruises and the swellings and the marks on Cavness' face other than the portion on his lips which was cut?

A. I don't recollect seeing his face swollen. I remember he had a cut on his lip. I don't recall which side it was, but he did have a cut there. [234]

Q. Do you recall whether the inside of his lips were also cut and bleeding or not?

A. I didn't examine him.

Q. You didn't?

A. I didn't look inside his mouth.

Q. All you know is that it was the outside?

A. For all I could see was just blood in the area. I didn't even look to see how bad it was cut.

Q. Do you recall that his mouth was full of blood, his teeth were colored red from the bleeding? Do you recall that? A. I don't recall that.

Q. Do you remember his shirt with blood on it?

(Testimony of Paul Shaffer.)

A. Yes, I believe he did have blood on his shirt.

Q. Is this the shirt he had on that day, do you recall? Take a good look at it, both the front and the back.

A. It is possible that this was the shirt he wore.

Q. Did your shirt have as much blood on it as this shirt seems to indicate?

Mr. Hoddick: Objection. It calls for a conclusion on the part of the witness that there is blood on the shirt, that there was blood on the witness' shirt.

Mr. Miho: He stated there was blood on the witness' shirt.

The Court: Well, also he said that it seems to be the [235] shirt.

Mr. Miho: I will reframe the question.

Q. Did your shirt have more blood on it than the Defendant's blood, do you recall?

A. My shirt have more than his?

Q. Yes. A. I didn't compare it.

Q. Well, give us a guess. Give us a human guess.

A. Well, I couldn't even begin to guess. I'd have to compare his shirt with mine and actually find out.

Q. How much blood did you have on your shirt? All the front was bloody?

A. No, I don't believe so.

Q. You didn't keep that shirt by any chance?

A. Oh, yes. It is a good shirt. I couldn't afford to throw it away.

(Testimony of Paul Shaffer.)

Q. You washed it and laundered it, I suppose?

A. Oh, yes, numerous times.

Q. When did Roberts come into the scene, Officer Roberts come into the picture?

A. Roberts, Pestano and Officer Marcotte, they arrived at the scene I believe when we already began to search the house. I don't know the exact time they came in. But they assisted in the search of the house. I know that.

Q. About how many minutes elapsed do you think from the [236] time the struggle was over to the time that these officers joined you?

A. Oh, a few minutes. I didn't time it. I don't know exactly how many minutes. I say approximately, I'd say about five minutes.

Q. But not more than five minutes?

A. It could be more. It could be less. I said approximately five minutes. That's my judgment of time.

Q. With relation to the search of the house, did they join you just as you began to search the house or not?

A. I don't know if they joined us when we started to search because I was already on my own. I began my work. Then as I began searching then I became conscious of the fact that these other officers were around there.

Q. Who handcuffed Cavness?

A. Who had what?

(Testimony of Paul Shaffer.)

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Q. Who handcuffed Cavness?

A. Who had what?

(Testimony of Paul Shaffer.)

The Court: Handcuffed Cavness. Who handcuffed Cavness, the Defendant?

A. I don't recall exactly who done it. I know we all had to assist in handcuffing him.

Q. Assist in handcuffing him? Are you sure that Marcotte, Roberts—and who was the other one?—and Sasaki, Roberts, Pestano and Marcotte, these three officers joined you after the struggle was over? Are you sure of that? A. I am fairly sure.

Q. Then I ask you again, do you remember who the Defendant was handcuffed to? Who was he handcuffed to? I will reframe the question. A while ago you stated that somebody handcuffed the Defendant, is that right, after he was subdued?

A. Yes, we had to handcuff him.

Q. He was struggling so much, is that right?

A. That's right.

Q. And throwing you around like a bag of rice, you say? A. All of us.

Q. All nine of you? A. That's right.

Q. I see. Well, then, Marcotte must have been there if all nine of you were there, is that right?

A. Wait a minute. The initial officers, the first ones that went in there, I don't know how many, I didn't count; Captain Whitford, Mr. Wells, Sergeant Sousa, Sergeant Sasaki, myself and Officer Abbey; there were seven of us, that is, six of us.

Q. Don't you remember Officer Abbey handcuffing this Defendant to Office Marcotte?

A. I don't recall that.

(Testimony of Paul Shaffer.)

Q. Would you deny that?

A. I don't even recall him being handcuffed to anybody.

Q. You don't recall that?

A. Because after he was quited down I believe the [238] handcuffs were taken off of him, if I recall correctly.

Q. Where? Outside? A. In the house.

Q. In the house? For what purpose?

A. Well, he behaved himself.

Q. He wanted to wash himself and take care of his bleeding, didn't he? Isn't that what, isn't that why his handcuffs were taken off?

A. I don't know if that was why. I didn't have anything to do with that part.

Q. What's that?

A. I didn't have anything to say or have the authortiy to have him, to have the handcuffs taken off of him.

Q. Isn't that when you walked into the bathroom with him and started to talk to him and tried to be a little kind to him?

A. I don't recall walking in the bathroom with Cavness.

Q. You don't recall that? A. No.

Q. Anyway, you don't recall who handcuffed the Defendant at all? You don't remember that?

A. Well, during the course of the struggle when Cavness resisted arrest, that is what our object then was, attempting to handcuff him, to subdue him.

(Testimony of Paul Shaffer.)

Q. Would you say that Mr. Wells was mistaken or that [239] he was lying under oath if he stated on the stand that the Defendant at any time, never at any time struck back at any of you excepting for the first shoving?

A. I didn't get that question, Mr. Miho.

Q. I will reframe it.

Mr. Hoddick: May it please the Court, I think if Mr. Miho is going to frame hypothetical questions that they should be in line with the evidence which has been adduced here in court. I don't mind your taking from a portion of the record what Mr. Wells said and asking the witness whether that is true or not, but I object to your making up out of your mind what Mr. Wells said.

Mr. Miho: I will try to reframe it to suit your objection.

Q. Officer Wells took the stand under oath here and stated that excepting for the first shoving under Cavness——

Mr. Hoddick: Excuse me. If you are going to do that, I suggest that you go to the record and quote what Mr. Wells said. It is not that I distrust your memory but let's just be absolutely certain and not put these hypothetical questions to the witness.

Mr. Miho: May I have a moment with Mr. Hoddick?

The Court: Yes.

(Counsel confer.)

(Testimony of Paul Shaffer.)

Mr. Miho: I will reframe the question. It will take [240] too much time.

Q. Mr. Shaffer, according to Mr. Wells, there is nothing in his statement, statement by Mr. Wells, that Cavness threw any of your officers around like a bag of rice or something like that that you stated. There is nothing——

Mr. Hoddick: I object to that. The Jury knows what Mr. Wells said and I don't think you have any right to stand here and pretend to quote what Mr. Wells said.

The Court: Well, on that score, that is obvious. Mr. Wells didn't say anything about a bag of rice.

Mr. Hoddick: I understand that. But this is a continuing line——

The Court: Actually it was a bag of potatoes, is what the witness said.

Mr. Miho: Well, I got it twisted. A bag of potatoes.

The Court: But if you are purporting to quote what Mr. Wells said, in the face of an objection, maybe we had better take time to get what he actually said.

Mr. Miho: Well, we will have to read his entire testimony. It will take too long.

The Court: Maybe you can get that in a different way.

Mr. Miho: Yes.

Q. Mr. Shaffer, Mr. Wells did not state so far as I recollect, that the Defendant did anything other



(Testimony of Paul Shaffer.)

than struggle, struggle with you officers? [241]

A. That's right.

Q. Now, you state today that—one more thing: Mr. Wells stated that Cavness tried to get away from you officers but that outside of trying to get away and outside of struggling with you officers that is all Mr. Wells' statement goes to so far as Cavness' action.

Mr. Hoddick: That is incorrect, your Honor. Mr. Wells also stated that the Defendant tried to bite on the Vicks inhaler tube.

Mr. Miho: Oh, yes, I will stipulate to that.

Mr. Hoddick: But if you are going to put these questions to the witness, let's give him the whole background.

Mr. Miho: Rather than spend the time, I will withdraw the question.

Q. I want to ask you, you still say that this Defendant Cavness grabbed a hold of you officers and threw you around like a bag of potatoes? You still say that?

A. I didn't say that Cavness grabbed a hold of us. I said he was throwing us off.

Q. Excuse me.

A. He was throwing us off just like sacks of potatoes.

Q. Well, how was he able to do that without using his hands?

A. Shifting his body, pulling his arm this way and that way. [242]

(Testimony of Paul Shaffer.)

Q. He never used his hands to grab any of you, then?

A. No, he wasn't flipping us or throwing us around.

Q. Did he strike any of you with his fists at any time?      A. I don't recall.

Q. Did he bite any of you?

A. I didn't get bit.

Q. Do you recall someone saying, "You black son of a bitch." Do you recall that statement?

A. No, I don't.

Q. You don't recall that?

A. I don't recollect that.

Q. Maybe somebody did say that?

A. I don't know.

Q. You don't know?

Mr. Miho: That's all.

The Court: Redirect?

### Redirect Examination

By Mr. Hoddick:

Q. Mr. Shaffer, you said that Officer Abbey forced open the Defendant's right hand and that Captain Whitford took something therefrom. What did Captain Whitford do within your sight with what he took from Caveness' hand?

A. As far as I could see, he kept it, held it and looked at it.

Q. Did he give it back to Officer Abbey or do you [243] remember——.

A. I don't recall now.

(Testimony of Paul Shaffer.)

Mr. Miho: Just a moment. That is a very leading question on a very material point. He is putting the idea in the witness' mouth.

The Court: Sustained.

Mr. Miho: He knows better.

By Mr. Hoddick:

Q. Mr. Shaffer, do you remember what Captain Whitford did with what he took out of Cavness' hand?

A. No, I don't recall exactly what he done with it.

Q. You stated on cross-examination that you turned the evidence which you had obtained over to Mr. Wells at the police station. Now, what evidence was that?

A. The four small pieces of that inhaler tube and the six capsules, those pills that had that white stuff inside of it.

Q. Did you find those four pieces of the inhaler tubes in the same area as where you found the capsules? A. Yes.

Q. Could you tell what part of the inhaler tube those four pieces came from?

Mr. Miho: Your Honor please, that is purely an opinion evidence calling for a conclusion, if your Honor please; unless he put it together or he is an expert along the line, [244] he is in no position to answer such a question.

Mr. Hoddick: I asked if he could tell.

The Court: If he knows, he can tell. Otherwise

(Testimony of Paul Shaffer.)

we are not interested in the speculation or opinion.

Mr. Hoddick: That's right. I will lay a foundation if the answer to that is yes.

The Court: All right.

Q. Mr. Shaffer, could you tell what part of the inhaler tube those four pieces came from?

A. I couldn't tell——

Q. Just answer that yes or no. Answer it yes or no.

Mr. Miho: The answer was interrupted and the answer was made, that I couldn't tell, before Counsel interrupted to try to change it.

Mr. Hoddick: Counsel didn't try to change it.

The Court: No, the answer came in while you were asking another question. Now, I will advise you also to ask one question at a time.

Mr. Hoddick: Yes, your Honor.

The Court: The witness said, "I couldn't tell." Is that correct?

The Witness: I didn't finish it.

The Court: All right, finish your answer.

A. (Continuing): I couldn't tell the exact part of the tube it came from. I did not reconstruct the tube afterwards. [245]

Q. Now, Mr. Shaffer, to whom did you give the four shattered pieces of inhaler tube?

A. Mr. Wells.

Q. And where did you do that?

A. In Captain Whitford's office at the vice squad, police station, Honolulu.

(Testimony of Paul Shaffer.)

Q. And when did you do that?

A. As soon as we came back to the station. I don't recall the exact time. The time was taken down.

Q. And was the condition of those pieces at the time that you gave them to Mr. Wells any different than at the time you found them?

A. No, sir. They were in the same condition as when I found them.

Q. And what did Mr. Wells do with those pieces in your presence?

A. I marked them. Then he wrote down what they were. He recorded them.

Q. Did he place them in any kind of a container?

A. Yes, I believe he put them in an envelope.

Q. Did you make any identifying marks on that envelope?      A. Yes, my initials.

Q. Is that the only envelope which you initialed in connection with this case?

A. I believe so. [246]

Mr. Hoddick: May I have Exhibit "C" for identification purposes?

Q. I show you Exhibit "C" for identification purposes and ask if your initials appear thereon?

A. "P.S." there. This is my handwriting. And this is the envelope I chiseled from the drug store at King and Nuuanu Street. We didn't have any.

The Court: What?

A. This is the envelope I chiseled from the drug

(Testimony of Paul Shaffer.)

store at King and Nuuanu Street. We didn't have any in the department that small. And that is my handwriting on there with the date and the time.

Q. I ask you to open this envelope, Mr. Shaffer. (Witness opens small envelope.) Pour the contents out in your hand. What do you have there in your hand that you poured out of your envelope?

A. Four pieces of broken Vicks inhaler tube.

Q. Are those pieces in the same condition as when you found them? A. Yes, sir.

Mr. Hoddick: Now, at this time, your Honor, I'd like to offer those four pieces in evidence as the Government's first exhibit.

Mr. Miho: We object to that introduction, on the grounds, on the motion that we have heretofore filed, your Honor. [247]

The Court: The witness may put them back in the envelope. The Jury will be excused at this time and I will hear Counsel on the point of law. So if the Jury will step outside, please——

(The Jury leaves courtroom at 10:35 a.m.)

The Court: The record may reflect that the Jury is now outside of the courtroom, beyond hearing, and that the Defendant is present. There is offered in evidence through this witness four broken pieces of what he says came from a Vicks inhaler. The objection is on the grounds stated in the motion to suppress. On the one hand, Mr. Hoddick, as you offer this, what crime have you established in order to have evidence put in which is



relevant thereto? In other words, where is the *Corpus delicti*?

Mr. Hoddick: Your Honor, on the question of proving the *Corpus delicti* I think it rests within the Court's discretion as to whether that must be proved before the introduction of any evidence or not. As a matter of fact, all of this evidence together, which I hope to have admitted by this Court, will establish the *Corpus delicti*.

The Court: Well, I recognize you have to put it in little by little but it seems to me that on your theory of the case broken pieces of a Vicks inhaler are insignificant unless you first establish that there is some offense. There is no reason why you can't call this witness back. [248]

Mr. Hoddick: No, I am perfectly amenable to that procedure. I simply wanted to follow this through in a certain chronological order which I thought would make a clearer story for both your Honor and the Jury.

The Court: Well, actually the objection is not on that ground.

Mr. Miho: Yes.

The Court: But it occurs to me that——

Mr. Hoddick: This will all tie in together before we get through.

Mr. Miho: Your Honor please, to save time I believe it would be better if we argued the introduction of all of this evidence because they are all related and the grounds of the objections are the same. The argument is the same. That Counsel in-

introduce all of it at the same time, after having done whatever he wants to lay the foundation down for its introduction, and we argue the matter all together at one time instead of piecemeal on it.

Mr. Hoddick: Well, on the other hand——

Mr. Miho: He loses nothing. Excuse me if I may interrupt. His case is not prejudiced in any way by having established everything first and then we argue the motion at the same time, your Honor, all at one time.

Mr. Hoddick: I don't object to that, Mr. Miho. I do have in mind this: We might stipulate that if the grounds [249] for your objection to the introduction of the evidence which we have marked here for identification purposes are going to be the same, that we can probably dispose of that question once and for all at the beginning, and then in the future when I offer, having established the continuity of the chain of evidence, I presume that you can renew your objection, but the Court can consider whatever argument I am predicating this on, on the theory that the Court will rule with the Government on this objection. But you can make your objections and stipulate that your argument would be the same. And then I presume in due course the Court will overrule each objection as it came along. And you can take an exception to each case. On the other hand, your Honor, if we are not permitted to introduce this on the grounds of Mr. Miho's objection, then I will assume that the rest of the evidence for those grounds is likewise inad-

missible, and if it is inadmissible I am going to be forced to rest our case.

Mr. Miho: Your Honor please, Mr. Hoddick forgets that these pieces of evidence were not handled and picked up by one and the same party, your Honor. There are so many parties involved. And how can I stipulate that the proper foundation would be laid outside of this motion, outside of this motion, that the proper foundation be laid for his introduction as they come along beforehand? That would be unfair to me and to my Defendant. [250]

Mr. Hoddick: You are perfectly right. The only thing that I can suggest in that regard is that as far as the objections which you have set forth in your motion, and so far as the objections which you apply to these four pieces are concerned, they will apply equally to other evidence.

Mr. Miho: Oh, yes.

Mr. Hoddick: If we fail to establish proper grounds for getting them in, you can object on that ground.

Mr. Miho: So long as we understnad clearly that the motion, as we understand it, that the grounds apply to all of it, to all of your evidence. But as to its admissibility in pieces as they come along, that is an entirely separate matter.

The Court: That is right.

Mr. Hoddick: Your Honor, also on that score I am afraid we are going to run into trouble because I can foresee certain grounds which Mr. Miho might urge in connection with these pieces

which he could not urge in connection with that evidence which was found within the house.

The Court: With respect to these pieces, are they stated in your motion?

Mr. Ahrens: Yes, all.

The Court: All right. I will take a brief recess and you can prepare to argue your motion in full. We might as well hear it now, before, as well as later. And as you [251] correctly both state, whatever disposition is made of the motion does not in any way preclude you from later making individual specific objections as individual things are offered in evidence. But this motion is directed towards the things recited in the motion claiming that they cannot be used in evidence in this case on the grounds that there has been an illegal search and seizure.

Mr. Hoddick: Your Honor, might I suggest that at the time that Mr. Miho filed this motion with the Court it came as a surprise. We had expected it prior to trial, at least longer than a few minutes. Consequently, I had not as yet had an opportunity to work up any material in defense to this objection. And if it would meet with the Court's convenience, I would like to suggest an adjournment until after lunch, and in the meantime I will endeavor to get whatever material we have together.

The Court: Well, you have the lunch hour. I will hear Mr. Miho's argument. Then I will take a recess and you can be preparing to go on after lunch.

Mr. Hoddick: Thank you, your Honor.

The Court: Will you call the Jury back and I will excuse the Jury until two o'clock.

(Jury returns to courtroom.)

The Court: You are going to be excused in a moment, so whoever wants to save time can come over and get your hat and [252] raincoat. The 12 jurors now being present, as well as the Defendant, I will advise the Jury at this time that I am excusing them until two o'clock. During the interim I am going to hear Counsel on a motion. So if you will report at two o'clock, we will be able to proceed. And at this time the Court will take a short recess and hear argument upon its return. Before we take the recess, the witness wants to give the clerk this envelope.

(A short recess was taken at 11:03 a.m.)

#### After Recess

The Court: Very well. I will now hear in its entirety the motion to suppress.

Mr. Ahrens: Your Honor, at this time we would like an oral amendment to our motion for suppression to include the box and 29 capsules, 29 empty capsules that were found in the Defendant's dwelling house.

The Court: That makes a second amendment. The first amendment that I allowed the other day related to the date.

Mr. Ahrens: To the date.

The Court: And now you wish to include the 29 empty capsules?

Mr. Ahrens: That's right, your Honor, that were found in the dwelling house.

The Court: All right. Any objection?

Mr. Hoddick: No objection. [253]

The Court: All right.

(Arugments on motion presented.)

The Clerk: Mr. Clerk, notify the jurors that, as is not unusual, things take longer than we have anticipated, and I will excuse them until nine o'clock tomorrow morning.

(The Court recessed at 12:23 p.m.)

#### Afternoon Session

(The Court convened at 1:40 p.m., the Jury being absent.)

(Counsel continued with arguments on the motion to suppress.)

(The Court adjourned at 4:30 p.m.) [254]

December 9, 1949

(The Court convened at 9:00 a.m., the Jury being absent.)

(Counsel resumed argument on motion to suppress.)

The Court: Let me go over that again on the search warrant. I do limit the seizure to that which the search warrant prescribes, namely, cocaine. Now, if upon the search either in the house or in the yard—although I don't think they relied on the



search warrant in the yard at all—there was pursuant to that search warrant uncovered and seized cocaine attached to something, I don't know what it is like, whether it naturally attaches itself to something or nothing, but if it attaches to something or if it is in something, all right, I will deem that to be within the scope of the search warrant. But if there are empty capsules or if there is a genuine Vicks inhaler tube that the talk seems to be centering about, I don't deem that to be within the scope of the search warrant. Do I make myself clear?

Mr. Hoddick: That is clear. But then on the grounds of the arrest, all corroborative evidence, cocaine or otherwise, found in the yard——

The Court: That is different.

Mr. Hoddick: ——is admissible. Now, also there comes up a question as to whether corroborative evidence found in the house will be admissible on the grounds of the arrest, [255] of a lawful arrest.

The Court: Well, I don't know exactly what you are talking about, but if on some other basis than this search warrant, with respect to something inside the house, you can get it in, all right. But I am just talking about the search warrant today. I repeat, I don't think they relied on the search warrant in the yard at all. It just happened to be while they were there something else more important happened under their eyes, before their noses. All right. Nine o'clock tomorrow morning we will proceed with the trial, and as we do, I want to

remind you now and probably will again that whenever we do anything like this by inquiry of interrupting the trial to hear motions such as this all of us except the Jury are apt to assume that certain things are already in or that certain persons testified thus and so. So I caution you to remember that the evidence taken on the motion has no bearing on the trial, and don't rely in any way on any false impressions in that regard. All right.

(The Court adjourned at 12:08 p.m.) [256]

### Certificate

I, Albert Grain, Official Court Reporter, U. S. District Court, Honolulu, T. H., do hereby certify that the foregoing is a true and correct transcript of proceedings in Criminal No. 10,256, United States of America versus Orestus Cavness, held in the above-named court on December 5, 7, 8 and 9, 1949, before the Hon. J. Frank McLaughlin, Judge, and a Jury.

/s/ ALBERT GRAIN.

Feb. 2, 1950.

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December 12, 1949

The Clerk: Criminal No. 10,256, United States of America vs. Orestus Cavness, for further trial.

Mr. Hoddick: Ready for the Plaintiff, your Honor.

Mr. Miho: Ready for the Defendant.

The Court: Note the presence of the jury and of the defendant.

Mr. Miho: May we note for the record at this this time an exception to your Honor's ruling on the motion.

The Court: You may. I do not believe under the new rules you have to note an exception. I think it is automatic, but to be on the safe side you may note it.

It occurs to me as I look at the blackboard this morning that some marks have been placed upon it during the hearing of the motion that are meaningless to the jury. Perhaps it might be a good idea, as a suggestion, to erase the diagram and draw a new one, unless there is something you want left on there or something put on during the argument on the motion.

Mr. Miho: It is all right with me to have it erased.

Mr. Hoddick: It is satisfactory to the Government.

The Court: Erase the blackboard.

(Blackboard erased.)

### PAUL SHAFFER

resumed the stand and testified further as follows:

The Court: This witness, I think, has been previously sworn. At the time the trial was interrupted to hear the motion, Captain Whitford was on the stand.

Mr. Hoddick: Your Honor, I think Mr. Shaf-

fer was on the stand, and I offered the contents of Exhibit C for identification purposes. It was at that stage we argued the motion for suppression of evidence.

The Court: That's right. I have my notes on the motion to suppress in the same file.

Mr. Hoddick: This was on redirect examination of this witness, your Honor.

The Court: All right.

Mr. Hoddick: May I renew that offer to have admitted in evidence the contents of envelope marked Exhibit C for identification purposes, consisting of four shattered pieces of a Vicks inhaler tube found by Officer Shaffer in the defendant's yard after the struggle.

Mr. Miho: We are still objecting, if your Honor please, no proper foundation being laid.

Mr. Hoddick: May it please the Court, the witness Wells testified that he was given the pieces, that he placed them in an envelope, I believe in Shaffer's presence. They remained in that envelope until the time that he brought them into the court room. There has been no substitution, no alteration. They were in the same condition as when they were [2] given to him by Shaffer. Shaffer testified that he found them in the yard and at the time he gave them to Mr. Wells, they were in the same condition as when he found them at the scene of the struggle. There has been other testimony to the effect that the defendant endeavored to chew on this Vicks inhaler tube, and in so doing the tube

(Testimony of Paul Shaffer.)

was broken. I think that is adequate foundation for admission into evidence.

The Court: Very well. The objection is overruled. Exhibit B for identification may become——

The Clerk: Exhibit No. 1. United States Exhibit No. 1.

Mr. Miho: Save an exception.

The Court: Granted.

Mr. Hoddick: May it please the Court, that was Exhibit C for identification purposes.

The Clerk: That's right.

Mr. Hoddick: Not Exhibit B.

The Court: Yes, C; I beg your pardon. United States Exhibit C for identification, which becomes Exhibit 1. All right.

(Thereupon, the document previously marked Exhibit C for identification was received in evidence as United States Exhibit No. 1.)

Mr. Hoddick: No further questions, your Honor.

The Court: Is there any further cross-examination? [3]

Mr. Miho: May I look at the exhibit, if your Honor please. I haven't seen it.

The Court: I believe it was exhibited the other day. You may not remember it, but this witness opened that envelope and took those pieces out.

Mr. Miho: I would like to renew the objection further on the grounds—Well, I can probably clear it up.

(Testimony of Paul Shaffer.)

Recross-Examination

By Mr. Miho:

Q. Who made these marks on these pieces?

The Court: What?

Q. Who made the marks on these pieces, in ink, if you know?      A. Which marks?

Q. Well, do you know if there are ink marks on these pieces or not?

A. I put my initials on.

Q. On each piece?      A. Yes.

Q. Where?

A. I believe it was on the inside where it would be legible.

Q. I am speaking of at what place?

A. You mean where I wrote them?

Q. Yes. [4]

A. At the police station before I turned them over to Mr. Wells.

Q. What marks did you put on the pieces?

A. "Ps."

Q. And where did you put the marks? Where and where did you put the marks?      A. What?

Q. With relation to the pieces, where and where did you put the marks?

The Court: Where and where?

Mr. Miho: Yes.

Q. (By Mr. Miho): What parts of each piece did you put the marks so-called?

A. I believe it was on the light side of them.

Q. The light side?      A. Yes.

Q. You mean the white side, the inside?



(Testimony of Paul Shaffer.)

A. Well, the light colored side. I believe that is where I put the marks.

Q. And at that time were there any other marks on the pieces? Anybody else make marks on the pieces that you know of?

A. No, I don't recall anybody else.

The Court: Speak louder.

The Witness: I don't recall anybody else putting [5] marks on them.

Q. You put the initials "PS" on it?

A. My initials, yes.

Q. On each piece? A. Yes.

Q. And so far as you know, from the time you had it until the time you handed it over to Agent Wells of the vice squad and until you saw it here before this Court, those are the same pieces?

A. That is correct, Mr. Miho.

Q. And you examined them carefully; is that right? A. Yes.

Q. In court? A. Yes.

Q. And so far as you know the only marks that you put on it were the marks "PS," your initials? A. My initials I put on it.

Q. And when you got them back that is all there was on the pieces; right?

A. When I got them back?

Q. When you saw them in court the other day.

A. I believe so. That is all.

Mr. Miho: I still renew my objection, if your Honor please. These marks are not all marked

(Testimony of Paul Shaffer.)

“PS,” unless my knowledge of the English lettering is not correct. Marks [6] on both the inside and outside, and not only on the inside.

Mr. Hoddick: Could I ask a further question of the witness.

The Court: Yes.

Mr. Hoddick: Look at these four pieces. Do your initials appear on each one of them?

The Witness: Yes, they do.

Mr. Hoddick: And on which side?

The Witness: On the light side.

Mr. Hoddick: Now, are there marks on the other side?

The Witness: Yes, appears to be marks. I can't read them.

Mr. Hoddick: Did you notice those the first time you examined the pieces?

The Witness: In court here?

Mr. Hoddick: Yes.

The Witness: They appear to be the same.

Mr. Hoddick: No. I say, did you notice those marks on the outside the first time you examined the pieces?

The Witness: Yes, I believe they were there.

Mr. Hoddick: I am talking about the ink marks on the outside of these pieces.

The Witness: Yes.

Mr. Hoddick: Your Honor, I submit that regardless of the marks that appear on the outside of the pieces, that would [7] only go, if anything, to the amount of weight which is to be given to

(Testimony of Paul Shaffer.)

this witness' evidence and would not run to the admissibility of the evidence. He has positively identified them as the same pieces and the marks that he put on them down at the vice squad office.

The Court: I don't think the witness is following either of you. I understand you, Mr. Witness, to say you picked these pieces off the ground after the struggle at the defendant's residence; is that right?

The Witness: Yes, sir, I did.

The Court: At that time were there any ink marks on those pieces?

The Witness: No, sir, not at that time.

The Court: I understand you further to say that you put your initials "PS" on the light side of each of those four pieces, at the police station.

The Witness: Yes, sir, I did.

The Court: Did anybody else, to your knowledge, put any ink marks on any one of those four pieces?

The Witness: I believe Mr. Wells did when I turned them over to him.

Mr. Miho: If your Honor please, I move that answer be stricken and the jury duly instructed to disregard it.

The Court: I am not interested in what you believe, and therefore the jury is to disregard it. The question is, [8] Do you know?

The Witness: Yes, Mr. Wells did.

The Court: Did you see him do it?

The Witness: He done it in my presence.

(Testimony of Paul Shaffer.)

The Court: You must have seen him then.

The Witness: Yes, sir, I did.

The Court: What are those other marks on each of those four pieces? Show him.

The Witness: It is writing in ink, but apparently it is blurred. It looks like "WW."

The Court: What?

The Witness: "WW." They are supposed to be Mr. Wells' initials.

The Court: Well, are those marks that are on there in ink, which are other than your initials, the marks which you say you saw Mr. Wells put on those pieces?

The Witness: Yes, sir.

The Court: Based on my questions, either of you may ask further questions.

Mr. Hoddick: No further questions.

Q. (By Mr. Miho): You say now you saw Mr. Wells mark those pieces in your presence?

A. Yes.

Q. At the vice squad? A. Yes.

Q. You saw that yourself? [9] A. Yes.

Q. He must have been sitting right by you or standing right by you?

A. He was sitting directly across from me.

Q. And what kind of marks did you see him make? A. Held the piece in one hand.

Q. A, B, C, D, E, F, G. Going down the alphabet, what kind of letters did he put on the pieces?

A. I couldn't tell.

(Testimony of Paul Shaffer.)

Q. Didn't you see him? Didn't you say you saw him marking it right in front of you?

A. That is correct. He had the piece and he held the pen, and it was a small piece, and he had to write with a pen. I didn't look at it after he wrote.

Q. You are sure he made some kind of a mark?

A. That is correct.

Q. You say he put the initials "WW" on it?

A. That's what it looks like.

Q. Why did you say a while ago, in my first questioning, before His Honor started to ask you questions, "I believe Mr. Wells marked them"?

The Court: Well, now, either that is in or out. If it is out, you can't ask a question based on it. That has been stricken at your request. Now you ask a question based on it.

Q. (By Mr. Miho): Did you make such a statement: "I [10] believe Mr. Wells marked them in my presence"? A. That's right.

Q. Later on you went on to state you actually saw him do it, that it was not belief but an actual seeing. A. That's right.

Q. Is this a "WW" here? You have seen this three or four times in court. Is that a "WW" mark?

Mr. Hoddick: Your Honor, I suggest that whatever marks that are on those pieces will speak for themselves. This man's conception of whether it is a "WW" or "YY" is hardly material to this case.

(Testimony of Paul Shaffer.)

Mr. Miho: Will you answer the question?

Mr. Hoddick: Wait, there is an objection.

The Court: Yes.

Mr. Hoddick: There is an objection.

The Court: The question may be answered.

A. I can't tell what that is.

Q. (By Mr. Miho): Does it look like an "A" to you, an "AA"; you have been to school.

A. But that is a funny looking "A."

Q. It looks like an "A" more than a "W," doesn't it?

A. It looks like a couple of scratches to me.

Q. What does this look like to you? Does it look like a "K" or a "W" to you?

Mr. Hoddick: Mr. Miho, I believe you objected to [11] the admission of this evidence.

Mr. Miho: It has been admitted over my objection, and I have a further right to use it.

Mr. Hoddick: You made a further objection which has not been ruled on by the Court.

The Court: That is right.

The Witness: This one piece——

The Court: Just a minute. Actually, at the time Mr. Wells, on the witness stand, took this, among several other envelopes and things, out of a big envelope, all we knew about it was it had the initials of Mr. Wells and possibly this witness on it. The other day when this witness opened the small envelope in court all he identified, as I recall, were the four pieces, without reference to any ink marks or initials.



(Testimony of Paul Shaffer.)

Mr. Miho: That's right.

The Court: Now for the first time, after it has been offered and received in evidence, you both start talking about initial marks on the four pieces.

Mr. Miho: The other day in court, if I may clear your Honor's recollection, I didn't have an opportunity to examine them very closely, if your Honor please. I was only interested from what the evidence was. I had never seen it until that day in court. It never occurred to me that there were any initial marks on it.

The Court: Well, the initial marks, as the witness [12] so testifies at the moment, are at most identification marks to trace the chain of possession.

Mr. Miho: That is right.

The Court: But I would much prefer, before you offer anything in evidence, to have the entire basis of it and not have it come in piecemeal.

Mr. Hoddick: Your Honor, I myself told the witness to look at the pieces and see if there were marks on them.

The Court: The fact that there are other ink marks on it doesn't destroy the fact that he identifies his initials on it. And he gave it to Mr. Wells. All the other marks—or what the other marks are, all he can say, as he has said, is that he saw Mr. Wells put something on in ink.

Mr. Miho: But they have got to be traced before they are admissible in evidence.

(Testimony of Paul Shaffer.)

The Court: Well, the testimony is that after he put his initials on them, he gave them to Mr. Wells, and that was the last he handled them until he opened them in court. Mr. Wells testified he received them from this man and kept them from that date until he brought them into court.

Mr. Miho: Then your Honor is overruling my objection?

The Court: Yes, your second objection is overruled.

Mr. Miho: Save an exception, if your Honor please.

The Court: Yes.

Mr. Miho: May I now show this to the jury.

The Court: Yes.

(Document handed to jury.)

Q. (By Mr. Miho): Did you go down to the Emergency Hospital with the defendant and Officer Marcotte before you went down to the vice squad?

A. Yes.

Mr. Hoddick: Objection, your Honor. Well, he has answered the question.

Q. And what part of your pocket did you have these pieces in? A My shirt pocket.

Q. Shirt pocket. And you found these pieces after the struggle; is that right?

A. That's correct.

Q. After the struggle. And who was present with you when you saw these pieces?

(Testimony of Paul Shaffer.)

A. Officer Abbey was outside and Agent Wells.

Q. They were all with you at the time you picked them up?

A. There were several of them around there.

Q. Was the defendant with you?

A. I don't recall his exact position at the time.

Q. Anyway, it was after the struggle, and the defendant, with Mr. Wells, had gone into the house once, and Abbey said something about finding something, and you came out of the [14] house, and that is when you found these four pieces?

A. I came out of the house and also Mr. Wells, and the defendant, if I recall correctly.

Q. Well, don't you know whether the defendant was with you at the time you picked these pieces up from the ground?

A. At the time I picked them up from the ground I don't know his exact position, exactly where he was.

Q. You picked them up, showed them to Mr. Wells, you said; right?

A. That's correct.

Q. And then you put it in your pocket?

A. That's right.

Q. And when you were struggling with the defendant, you didn't see any pieces like that at any time; is that right? When you were trying to subdue the defendant, you never saw any pieces like that on him or on the scene at any time during the time that you were trying to subdue the defendant?

(Testimony of Paul Shaffer.)

A. At the time I was trying to subdue the defendant the only thing I saw was the small white pieces that fell.

Q. From where?

A. From the vicinity of his hand.

Q. You just looked at it? A. What?

Q. The vicinity of his hand? Which hand?

A. The hand he had that object in, the right hand. [15]

Q. The right hand. How did it happen to fall out, do you recall?

A. I don't recall exactly how it fell out. All I had was a glimpse of the pieces dropping. What they were I don't know.

Q. And what did you do when you saw pieces dropping?

A. I was still hanging onto the defendant.

Q. I see. Did you ever see the defendant have his two hands like this (indicating) together in front of his mouth at any time?

A. Two hands?

Q. Yes, to his mouth.

A. I don't recollect. I was on his back. I know he had one hand up to his mouth. That is when I heard that chewing sound.

Q That is when you saw him put one hand up to his mouth? A. That's right.

Q. His right hand? A. That's right.

Q. That is when he was flat on his stomach, or when he was still standing up?

(Testimony of Paul Shaffer.)

A. He was half down and half up.

Q. Half down and half up. And that is the time you were trying to give him a choke hold, as you told us the other day, a choke hold on him?

A. That's right.

Q. And he was trying to chew at the same time you were giving him a choke hold; is that right?

A. Yes, that's right.

Mr. Miho: That is all.

The Court: Very well, you are excused.

(Witness excused.)

The Court: Next witness.

Mr. Hoddick: Officer Abbey, please.

### ARTHUR F. ABBEY

called as a witness on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

The Court: Will you please state your name, age, residence, occupation, and citizenship.

The Witness: Arthur F. Abbey, 3812 Leahi Avenue.

The Court: Honolulu?

The Witness: Honolulu.

The Court: Age?

The Witness: Age 28.

The Court: Occupation?

The Witness: I am a reserve police officer.

The Court: Speak louder.

(Testimony of Arthur F. Abbey.)

The Witness: Reserve police, City and County of Honolulu, Territorial deputy high sheriff. With the Encyclopedia Britannica. [17]

The Court: Citizenship?

The Witness: United States of America.

The Court: Only?

The Witness: Only.

Direct Examination

By Mr. Hoddick:

Q. How long have you been a reserve police officer, Mr. Abbey?

A. Approximately, almost a year, sir.

Q. And where do you live?

A. 3812 Leahi Avenue.

Q. And do you know the defendant Orestus Cavness?

A. Yes, sir.

Q. And where does he live?

A. 3811 Leahi Avenue.

Q. And where is 3811 Leahi Avenue in relation to your house?

A. About directly across the road from mine.

Q. Did you participate in a raid on the defendant's premises with Mr. Wells on July 19, 1949?

A. Yes, sir.

Q. What time did that raid take place?

A. Approximately at 5:40.

Q. In the afternoon?

A. P.M., yes, sir.

Q. And where were you immediately prior to the raid? [18]



(Testimony of Arthur F. Abbey.)

A. In my residence at 3812 Leahi Avenue.

Q. Was there anybody else there with you?

A. Yes, sir.

Q. Who?

A. Agent Wells, Captain Whitford, Sergeant Sousa, Officer Shaffer, and Officer Sasaki.

Q. How long had they been there?

A. They reached my house at approximately 2:40 p.m.

Q. And you say the raid was made at approximately 5:40?      A. Yes, sir.

Q. Will you describe what happened from the time that the officers and you left your house.

A. Agent Wells said that the defendant had returned. He had left my premises, with other officers I had mentioned following. I was the last one to leave my residence. I saw Agent Wells approach the defendant, the car door was opened, and as I was coming across the street, the defendant pushed Agent Wells on this part of the body (indicating). As I ran up, I grabbed the defendant by the leg and the struggle took place.

Q. Approximately how long did the struggle last?

A. From three to four minutes, approximately.

Q. And what was the outcome of the struggle?

A. Well, the defendant was—he struggled; he was on the ground, he got up two or three times, and the last time he [19] was down Captain Whitford was trying to remove an object from his right

(Testimony of Arthur F. Abbey.)

hand. He was trying to open his hand, and Captain Whitford asked me to use my blackjack on the back of his hand to open it up. At that time he had removed a part of a Vicks inhaler.

Q. You did use the blackjack on the back of the defendant's hand?      A. Yes, sir.

Q. And as a result of that the defendant opened his hand?      A. Yes, sir.

Q. And you removed the part of the Vicks inhaler?      A. Captain Whitford.

Q. Go ahead.

A. Then Agent Wells asked me to assist him in opening up the left hand, which I tried to do so, and he directed me to use the blackjack in the same manner. At that time when his hand opened I noticed a small object falling from his hand. Immediately after, he said, "Take me in the house," and he stopped struggling. At that time I handcuffed him and Agent Wells and the other officers went in the house with him.

I went back to the base of the cocoanut tree to see what had fell from his hand at the struggle.

Q. Did the struggle take place near the cocoanut tree?

A. Yes, sir. I picked up the top of a Vicks inhaler, and I noticed two capsules adhesive to it. I put it back on [20] the ground where it was laying and I called Agent Wells at once, and he came out.

Q. Did you stand by there until Agent Wells arrived?

(Testimony of Arthur F. Abbey.)

A. I did, sir. And he picked it up and examined it and handed it to me. I held it until we was into the station, which I turned it over to him and initialed it with my initials on it.

Q. Dd you hold it in your hand or did you put it in your pocket?

A. I put it in my pocket after Agent Wells handed it back to me after he had examined it.

Q. Which pocket did you put it in?

A. I believe it was my left one.

Q. Did you say you put your initials on it?

A. Yes, sir, at the police station.

Q. Handing you United States Exhibit A for identification purposes, will you open it and tell us if the piece that you picked up from the ground is in there.

The Court: Wait a minute. Let the record show that as he opened the large envelope he removed from it two small sealed envelopes, one of which he is now opening. Which one are you opening?

Mr. Hoddick: May the record show, your Honor, that one sealed envelope has written on it in ink "Exhibit 2," and the other sealed envelope has written on it in ink "Exhibit [21] 3."

The Court: Which one did the witness start to open?

Mr. Hoddick: Exhibit 2, your Honor.

The Court: This is not the one he started to open. What is that?

(Testimony of Arthur F. Abbey.)

Mr. Hoddick: That was 3. I think this was torn.

Mr. Miho: He just started to open it.

Q. (By Mr. Hoddick): Well, now, before you open either of them, after you gave this piece of Vicks inhaler tube, with the two capsules adhesive thereto, to Mr. Wells down at the police station, did you see what he did with the part that you gave him?

A. He had sealed it in an envelope, I believe, at that time.

Q. Did you see him do it? A. Yes, sir.

Q. He did it in your presence?

A. Yes, sir.

Q. And did you see him write on that envelope?

A. He was writing something. I didn't recall what it was.

Q. Did you make any marks on the envelope that he put the part into, the part that you had found? A. I don't recall.

Q. Mr. Abbey, I ask you to open the envelope, not the [22] one that you started to open, but the other one, marked Exhibit 2. A. Yes, sir.

Q. And examine the contents.

Mr. Miho: If your Honor please, I believe Counsel has no business to direct the witness to open any particular envelope, if your Honor please, unless he can explain the reason for it. The record shows that this witness, after what purported to be a proper foundation was laid, was

(Testimony of Arthur F. Abbey.)

asked to open the envelope that he was talking about. For Counsel to switch now to some other envelope and lead him on into a particular envelope is entirely incorrect, if your Honor please, under the circumstances.

The Court: It all came about simply because I wanted to know which envelope he was tearing, and he did tear one to a small extent, one of the smaller of the two envelopes that came out of the big one. Now your objection presently is to his being directed to start tearing open the other envelope?

Mr. Miho: Yes. You see, he was asked to open the envelope in which the object he was talking about was placed and he did reach for an envelope there after looking at both of them.

The Court: Mr. Witness, can you tell from looking at those two small envelopes which one contains the object you are talking about? [23]

The Witness: No, sir.

The Court: Did you put the object you have been testifying about in either of those envelopes?

The Witness: No, sir.

The Court: There has been nothing about these two small envelopes. Mr. Wells, when he was on the stand, as to this big envelope, started to tear it open and he was stopped.

Mr. Miho: That is right.

The Court: And a moment ago this witness was asked to tear this big envelope, and he took

(Testimony of Arthur F. Abbey.)

two little envelopes about which he knows nothing.

Mr. Miho: Except he saw Mr. Wells put the article he found into a small envelope.

The Court: It might be two other small envelopes for all I know.

Mr. Hoddick: Mr. Witness, will you read the writing on the envelope that you did not tear.

Mr. Miho: If your Honor please, I will object to that. That is certainly leading him on as to what is in there, unless he put it in himself and wrote it on there himself. He is not the proper person.

The Court: I think you had better withdraw him and put Mr. Wells back on the stand.

Mr. Hoddick: Your Honor, he can identify, I suspect, the contents of one of those envelopes. Obviously, with no [24] identifying symbols on the envelope itself he is unable to tell the envelope it is except from what it says.

The Court: From his testimony that appears clear.

Mr. Hoddick: All he has to do, if my presumption is correct—and if it is not, then obviously we are not going to be able to get the evidence in. All we have to do is have him look at the contents of those envelopes and he can identify which piece was the one he found.

The Court: If you want him to tear open both of them, go ahead. Let's trace this thing.

Mr. Hoddick: We have it traced as far as the



(Testimony of Arthur F. Abbey.)

contents are concerned, and I don't think the envelopes make a particle of difference.

The Court: I agree with Mr. Miho. You can't direct him as to which envelope to open.

Q. (By Mr. Hoddick): All right, Mr. Abbey, will you open both of those envelopes and don't destroy the writing on the outside.

Mr. Miho: I object. Mr. Hoddick knows how to present evidence in the way it should be presented to the Court and jury, if your Honor please. He knows what steps to follow, and I believe your Honor even instructed him a moment ago how to proceed with this evidence.

The Court: I am not trying his case for him. He can do it any way he wants. [25]

Mr. Miho: He is not the person who placed anything in an envelope that is being presented here, if your Honor please.

The Court: All right, Mr. Miho, there is no need of discussing it any further. All he is asking the witness to do is to tear open two envelopes, which he is physically able to do. Go ahead, Mr. Witness. You are asked to tear open two envelopes. Do it; then stop. Just tear them open. That is what you were asked to do.

Q. (By Mr. Hoddick): Mr. Abbey, will you examine the contents of either one of those envelopes and advise us as to which envelope you are looking into, whether it is Exhibit 2 or Exhibit 3.

(Testimony of Arthur F. Abbey.)

Mr. Miho: If your Honor please, we still renew our objection. It is entirely improper for evidence to be submitted by Counsel in this fashion.

The Court: Overruled.

Mr. Miho: Save an exception.

The Witness: Exhibit 2.

The Court: And what are the contents of that?

The Witness: The top of an inhaler tube.

Q. (By Mr. Hoddick): Is there anything adhesive to the top of that inhaler tube?

A. Yes, sir. Part of a capsule.

The Court: Wait a minute. The thing you removed [26] from that small envelope marked Exhibit 2 by somebody else—it is not an exhibit in this case—is that what you say you picked up at the defendant's premises and later gave at the police station to Mr. Wells?

The Witness: Yes, sir.

Q. (By Mr. Hoddick): Mr. Abbey—

The Court: Wait a minute. I think the record should describe what he took out of that envelope in terms of being two separate things. I don't want you to describe them other than in terms of being objects. He took out two separate things from that small envelope. All right.

Mr. Hoddick: That is agreed.

Q. (By Mr. Hoddick): Do your initials—Are there any identifying marks on either of those objects which you just took out of the small envelope? A. Yes, sir.

(Testimony of Arthur F. Abbey.)

Q. And what are they and on which object, the larger or the smaller?

A. At the time I initialed these, your Honor, I used the pen——

The Court: Louder.

A. (Continuing): At the time I initialed these, I used the pen and it looks like it has been rubbed. However, it is hard to make out my initials at this time.

Q. (By Mr. Hoddick): Was the part which you gave to [27] Mr. Wells in one piece, one whole, or two pieces?

A. One whole piece, sir.

Q. So that is not in the same condition now as it was when you gave it to Mr. Wells?

A. No, this part here was stuck to this object here, capsules.

Q. Are those, what you have described as capsules, in the same condition as they were when they were stuck to the inhaler tube?

Mr. Miho: If your Honor please, the exhibit speaks for itself. There is certainly no capsule in the top of the piece.

Mr. Hoddick: I said as he so described as having been capsules.

The Court: Well, the witness did use that word. Whether it is or isn't is a question of fact, but whatever the smaller of the two pieces is, I understand him to say at the time he gave it to Mr. Wells it was attached to the larger piece.

Mr. Hoddick: That is correct.

(Testimony of Arthur F. Abbey.)

The Court: You are asking him now, in view of the fact there are two pieces, whether or not these two things are now in the same condition as when he gave them to Mr. Wells; and, obviously, from his prior testimony, the answer is "no." [28]

Mr. Hoddick: He said "no" to that, your Honor.

The Court: You said no they are not now in the same condition as when you gave them to Mr. Wells?

The Witness: That is right, your Honor.

The Court: Two pieces instead of one.

Mr. Hoddick: I am also asking the witness if the smaller piece, which he said was attached to the larger piece, by itself is in the same condition.

The Witness: Yes, sir.

Q. (By Mr. Hoddick): It is?

A. The smaller piece, yes, sir.

The Witness: May I retract that statement, your Honor. At the time I found this top of this capsule, the Vicks inhaler, there were two capsules placed in there. It looks to me at this time this one here is dried up. They were both about the same size.

Mr. Miho: If your Honor please, I move any opinion evidence like that be stricken.

The Court: That may go out.

Mr. Hoddick: He has simply testified that the condition of those smaller particles has changed.

Mr. Miho: To explain how part of it has disappeared is something else again.

(Testimony of Arthur F. Abbey.)

The Court: The witness' last answer is stricken and the jury instructed to disregard it. All he can say, which [29] he has said, is it is not now in the same condition as when he gave it to Mr. Wells.

Q. (By Mr. Hoddick): But from the time you found that larger piece with the smaller piece adhesive thereto until the time that you gave it to Mr. Wells, was there any change in its condition?

A. What was that question?

Q. From the time you found the larger piece there, with the smaller piece stuck to it, until the time that you gave it to Mr. Wells, was there any change in its condition? A. No, sir.

Mr. Hoddick: No further questions.

The Court: Cross-examination.

#### Cross-Examination

By Mr. Miho:

Q. Officer Abbey, you five officers with yourself were waiting in your home from about 2:30 until about 5:40? A. Yes, sir.

Q. And what were you doing during that two and a half to three hours' wait in your home, all six of you?

A. Sitting in my living room surveying the defendant's house.

Q. You weren't all six watching the defendant's house, were you? A. Five officers was. [31]

Q. You mean just glued to the window watching the defendant's house?

(Testimony of Arthur F. Abbey.)

A. They were on the chairs, and you can sit down and look directly across the road to defendant's house.

Q. What were you doing besides sitting there, if anything?      A. Talking.

Q. Talking?      A. Yes, sir.

Q. Did you play any cards?      A. No.

Q. Drink any water?

A. Drank 'some water.

Q. Ice water?

A. I believe it was. I don't recall.

Q. Did Agent Wells drink any ice water?

A. I don't recall.

Q. Any Scotch or wine of any kind, or any kind of liquor?      A. No.

Q. Not one drop?      A. No.

Q. You were on duty?      A. Yes.

Q. So none of you drank anything at all? [31]

A. Except water.

Q. Except water. You were in the living room all the time yourself?      A. No.

Q. Where were you?

A. In the kitchen.

Q. In the kitchen doing what?

A. Went out and had a drink of water myself.

Q. Drink of water yourself. Now, you came out of your home, all six of you, sometime about 5:40; is that so?      A. Approximately.

Q. And Agent Wells, you say, said something about, "He is back now"?      A. Yes, sir.



(Testimony of Arthur F. Abbey.)

Q. And he left your house first?

A. Yes, sir.

Q. Your house is directly across from the defendant's house?

A. Approximately directly across.

Q. And defendant has a thick mock orange hedge fence on his front, entire front except for the opening for the driveway, and a similar tall mock orange hedge completely on the left makai side of his house as you face it; is that right?

A. It is a hedge, orange; I don't know how thick it is, not too thick. [32]

Q. You couldn't walk through it, could you?

A. I believe you could run and put yourself through, yes.

Q. You can go through it?

A. I believe so.

Q. You have lived in that house across the street from Cavness how long?

A. Approximately five or six months.

Q. Five or six months. You have seen that hedge there every day from the time you have been there; is that right? Is that right?

A. Yes, I have seen it.

Q. And you say if you pushed yourself you could push yourself through the hedge?

A. You can.

Q. In the front?

A. You can.

Q. Standing up?

A. Standing up.

Q. You know better than that.

(Testimony of Arthur F. Abbey.)

Mr. Miho: Withdraw the question.

Q. (By Mr. Miho): Can you dive through it? Can you dive through that front hedge?

A. I said you can go through it.

Q. Can you dive through it and come up standing on the [33] other side?

Mr. Hoddick: Objection. I think this calls for a conclusion this witness is not qualified to give.

Mr. Miho: He is qualified. He knows the fence.

Mr. Hoddick: They are merely looking at a hedge. That is hardly enough for a witness to determine whether he could dive through it. I don't think it has a material bearing.

The Court: Overruled.

Mr. Miho: Answer the question.

The Witness: Your Honor, he asked me the question "diving through it." I don't know what he means by "diving through."

The Court: He doesn't understand the question.

Q. (By Mr. Miho): You don't understand the question? A. No, sir.

Q. From where your house is can you run across the street, Leahi Avenue, and dive through that front hedge at any point and come through?

A. Well, diving, I thought like you dive in water, head first.

Q. Head first into the hedge. Can you do such a thing? A. Not head first.

Q. Not head first. You wouldn't dive through that hedge [34] fence yourself?

(Testimony of Arthur F. Abbey.)

A. Wouldn't head first.

Q. What?

A. You couldn't do it with your head first.

Q. Now, you were the last to come to the scene; is that right?      A. Right.

Q. And, Officer Abbey, you were about eight to ten feet behind Mr. Wells as Mr. Wells entered into the defendant's driveway?      A. No.

Q. What is that?

A. I was further distance than that.

Q. Further distance than that. You were in the middle of Leahi Avenue; is that right?

A. If I recall, approximately.

Q. Approximately in the middle.

Mr. Hoddick: When, Mr. Miho?

Mr. Miho: Will you let me finish, Mr. Hoddick.

Q. (Continuing): And at that time Agent Wells was almost up to the defendant?      A. No.

Q. Is that right?

A. He was standing next to the defendant.

Q. He was standing by the defendant's left front door? [35]

A. Standing next—the door was open. He was standing next to him.

Q. And the door was open?

The Court: Automobile door?

The Witness: Automobile door.

Mr. Miho: I beg your pardon?

The Court: So we will all remember, it was the automobile door.

(Testimony of Arthur F. Abbey.)

Mr. Miho: Yes, the automobile door. Is that right?

The Witness: Right.

Q. (By Mr. Miho): The automobile was how far in the driveway of the defendant, Mr. Abbey?

A. About the middle of his driveway. I don't recall the distance.

Q. That driveway is about seven feet or eight feet wide. It is a very narrow driveway; isn't that so?

A. I don't know.

Q. You don't know. You have a driveway in your yard. How wide is that? Three feet?

A. I don't know.

Q. You don't know. How wide is a car? By the way, do you think you can answer that better today?

A. Approximately five feet.

Q. Five feet. [36]

The Court: Wait a minute. "Better today." I know what you are talking about, but I told you both the other day to remember that evidence taken on the motion is not part of this record as to the trial. Now the jury doesn't know what you mean by "better today." That is stricken, and you start all over again.

Mr. Miho: I believe, if your Honor please, to get that point straight, in cross-examination of a witness, what he has testified to under oath on a motion or for any other purpose, if it is contradictory, is admissible in questioning during cross-examination, your Honor.

(Testimony of Arthur F. Abbey.)

The Court: But standing alone, unless you elaborate on the "better today," it doesn't mean anything to the jury.

Mr. Miho: Yes, I may not have elaborated my question enough, but I just wanted to have an understanding, if your Honor please, as to that.

The Court: Yes, you can impeach him.

Mr. Miho: If here he says anything contradictory to what he has stated during a hearing on a motion, I have a perfect right to examine him on that.

The Court: If it is material, yes, but I want you to remember the jury has to follow, too. They can't follow with reference to something they know nothing about. That is stricken and you start over again.

Q. (By Mr. Miho): Do you know how wide a car is? [37] A. Approximately five feet.

Q. Five feet. You thought a car was three feet wide the other day; isn't that true?

A. I measured it since then.

Q. You have measured it since that time. Have you measured how long a car is since the last hearing? A. What car are you talking about?

Q. Let's say your car. What kind of a car do you have? A. '38 Chevrolet.

Q. How long is that?

A. Approximately 16 to 17 feet.

Q. You thought it was 7 feet the other day, didn't you?

(Testimony of Arthur F. Abbey.)

Mr. Miho: Well, I withdraw the question.

Q. (By Mr. Miho): Mr. Abbey, so you stood in the middle of Leahi Avenue at the time Agent Wells was up to the defendant's car and his left front door was partially open?

A. What was that question?

Q. You were the last to leave the house and you were in the middle of Leahi Avenue. I am trying to get the distance from where you were at the time you saw the defendant being approached by Mr. Wells. That is my purpose. You were, you say, at about the middle of Leahi Avenue at the time Agent Wells, who was the first to come up to the defendant, was by the defendant's front left door of his automobile; right? [38]

A. No, sir. I said he was standing by the defendant with the left front door open.

Q. Who had the left front door open? Agent Wells had his right hand on it, or defendant opened it himself with his left hand?

A. The door was open.

Q. You don't know who opened it?

A. No.

Q. You didn't see anybody's hand on the left front door? A. No.

Q. You didn't see that. Didn't you see defendant's hand on the front door handle?

A. No.

Q. Couldn't you see that from where you were standing? A. The door was wide open.

Q. How wide open?



(Testimony of Arthur F. Abbey.)

A Just as far as the door would open up.

Q. You mean the door was completely open?

A. Yes.

Q. When you first saw Mr. Wells up to the defendant's car, the door was completely open?

A. Yes.

Q. Well, then, Mr. Wells was facing the defendant in an open space; is that right? Or near him, near the defendant?

A. He was near the defendant. [39]

Q. He was near the defendant. The door was not in between Mr. Wells and the defendant then?

A. No.

The Court: Excuse me. Let's take our first recess at this time.

(Recess had.)

Q. (By Mr. Miho): Mr. Abbey, you were the last to arrive at the scene; right? A. Right.

Q. About how far would you say you were from Mr. Wells to where you were at the time you saw Mr. Wells come up to the defendant's car?

A. What was that again, the question?

Q. From where you are sitting how far were you from Mr. Wells when Mr. Wells first reached the defendant, the defendant being on his left front seat?

A. Well, he was standing when I first saw Agent Wells.

Q. When you first saw the defendant—forgetting the prior question of mine—when you first saw the defendant, the defendant was already standing

(Testimony of Arthur F. Abbey.)

up outside of his car; is that what you are trying to tell us?      A. No.

Q. What was the defendant doing when you first saw the defendant, if anything?

A. He was sitting in his car. [40]

Q. He was still sitting in his car?

A. With his leg half out like he was going to step out of the car.

Q. Just as if he was going to step out of the car?      A. That's right.

Q. You could see the left front door, couldn't you?      A. Right.

Q. In what position was the left front door at that time?      A. Wide open.

Q. All the way open?      A. Open.

Q. So that the first time you saw the left front door, it was all the way open?      A. Right.

Q. Now at that time was the defendant's hand on any part of that left front door?

A. I don't recall.

Q. You don't recall? Well, he might have had his left hand on some part of that left front door, mightn't he?

He might have had his left hand on some part of that left front door; is that right?

A. I don't recall.

Q. But I am asking you whether defendant might have. Try to think. [41]

The Court: Wait a minute. There are two different questions. "Might have," and then you say, "might recollect."

(Testimony of Arthur F. Abbey.)

Mr. Miho: I will reframe the question.

Q. (By Mr. Miho): Do you recollect, Officer Abbey, that the defendant had his left hand about that time on some part of the left front door?

A. I don't recall.

Q. You don't recall at all. He might have, though; is that right?

A. I could not say. The door was wide open.

Q. You saw his left foot, the defendant's left foot; you saw that?

A. I saw his left leg.

Q. Left leg. And that was out of the car, or partially out of the car?

A. Well, I wouldn't say partial. Just like a Hudson, at the time, the car the defendant was driving was low.

Q. I know it is low, but was his left foot touching the ground or not then?      A. No.

Q. Was it hanging out of his car, or was it on the running board?

A. They don't have a running board.

Q. Well, where was his left foot?

A. Just like you were sitting in a chair and you turned [42] around and were going to get up. It was not out of the car and it was not on the running board. His leg was like an attempt to be made to step out of the car.

Q. You could see that from where you were standing?      A. I was not standing.

Q. You weren't running?

A. More or less.

(Testimony of Arthur F. Abbey.)

Q. You told us, didn't you, the other day that it was half way between a running and a walk?

A. Right.

Q. And you were still on Leahi Avenue; that is the road fronting your house and the defendant's house?

A. Right.

Q. And how far were you at that point from the defendant, approximately, from where he was sitting? As far as the railing here, the first row of seats, the second row of seats, the third row of seats, or the wall?

A. I would say approximately, about 10 feet.

Q. You say 10 feet?

A. Approximately.

Q. Now is my recollection correct that you stated under oath here the other day that at that point or some point near there at that time you were approximately 20 feet away from the defendant and Mr. Wells?

A. I don't recall. [43]

Q. You don't recall that. Do you remember my standing here some place and pointing out a position to you and you said that was about it, and we stipulated that was about 20 feet?

A. I don't recall that.

Q. You won't deny you guessed it was 20 feet at that time, would you?

A. What is the question?

Q. You would not deny you said the other day you thought you were about 20 feet away from the defendant and Mr. Wells, would you?

A. I don't recall it.

Q. You don't recall. But you were on Leahi Avenue; that is certain?

(Testimony of Arthur F. Abbey.)

A. Part of Leahi Avenue.

Q. And what was Mr. Wells doing at that time?

A. The door was wide open. He was standing near to the defendant with a paper in his right hand, and his other hand like this (indicating), and the defendant pushed it.

Q. Show us again how the defendant pushed Mr. Wells.

A. (Indicating.)

Q. Once more just to make sure.

A. (Indicating.)

Q. Just pushed him like that; is that right?

A. Pushed like that (indicating).

Q. What part of Mr. Wells' body? [44]

A. Up this part of his chest (indicating).

Q. And then Mr. Wells grabbed onto his left arm at the same time?

A. I don't recall where he grabbed.

Q. What is that? A. I don't recall.

Q. You said something about Mr. Wells grabbing onto him and hanging onto him from the beginning to the end of the struggle, didn't you?

A. The other officers, when Agent Wells staggered back after the push, grabbed him.

Q. What other officer grabbed the defendant?

A. I don't recall which officer it was. There were five of us.

Q. You kept on going to this place, didn't you? You kept on going to Mr. Wells and the defendant, didn't you?

A. I was coming to the scene, yes.

Q. That was your purpose, to go to the scene;

(Testimony of Arthur F. Abbey.)

isn't that right?           A. Right.

Q. And yet you don't recall what other officer grabbed hold of the defendant?           A. No.

Q. You don't recall that at all?           A. No.

Q. But you are sure somebody else other than Mr. Wells grabbed the defendant at that point?

A. Right.

Q. Well, what other officer was there ahead of you near Mr. Wells and the defendant at that point?

A. I don't recall.

Q. You don't recall. Well, how many officers were there?           A. Five besides me.

Q. Five besides you. At that point; right?

A. I don't know whether it was at that point. It was all around.

Q. The five officers were all near the defendant and Mr. Wells; is that right?

A. I don't recall.

Q. You don't recall. Was there anything to obstruct your view from where they were, Mr. Wells and the officers and the defendant were, and from where you were walking?           A. No.

Q. The hedge didn't get in your way?

A. No.

Q. The hedge at the back of the car?

A. No.

Q. You are sure of that?           A. Positive.

Q. The hedge is how tall?

A. I don't know.

Q. Taller than you, isn't it?

A. I couldn't say.

Q. You don't know?           A. I don't know.



(Testimony of Arthur F. Abbey.)

Q. There are two coconut trees in the yard, aren't there, where the struggle took place?

A. Yes.

Q. The fact that you don't recall is because the coconut tree, the back of the Hudson car of the defendant, and the front hedge got in your way; isn't that right?

A. No.

Q. You were able to see everything? Nothing was in your way? Your line of vision was not obstructed at any time?

Mr. Hoddick: Objection. The question is too indefinite. "You were able to see everything."

The Court: Overruled.

Q. (By Mr. Miho): Will you answer the question?

A. What was the question again?

Q. There was nothing to obstruct your view from where you were proceeding to the scene and where something was taking place near the left front of his car; there was nothing to obstruct your view then, from what you have just told us?

A. At the time Agent Wells was talking to the defendant, [47] no.

Q. What about after that until you got to the scene, did anything come to obstruct your view?

A. After the officers grabbed the defendant to assist Agent Wells, we was all around him.

Q. But you saw everything, didn't you?

A. What do you mean, I saw everything?

Q. Who was around the defendant and who was with Mr. Wells and who was doing what?

A. Not after the struggle, I didn't pay any attention.

(Testimony of Arthur F. Abbey.)

Q. You didn't pay any attention. Then you kept on going to the struggle, though after the struggle you didn't pay any attention, but you kept on going to the struggle; isn't that right?

A. After the defendant pushed Agent Wells, I kept going to the struggle, yes.

Q. And what was the first thing you did?

A. Grabbed the defendant's leg.

Q. Grabbed the defendant's leg? A. Yes.

Q. Is that the time the defendant fell down?

A. It was shortly after he fell; I don't recall what time it was.

Q. Before you went up to grab his leg, did you see the defendant fall down at any time? [48]

A. No.

Q. You never saw him fall down? A. No.

Q. You are sure of that? A. Sure.

Q. And you had the defendant in a clear view to you, though; isn't that right? The defendant was clearly in your view all the time, though; isn't that right?

A. It was a good deal clearer when I first saw Agent Wells approach him.

Q. You never saw the defendant fall down up to the time you grabbed his leg? A. Right.

Q. You are sure of that? A. Right.

Q. You grabbed his leg and the defendant fell down, you say? A. Yes.

Q. And who else was hanging onto the defendant at that time?

A. The rest of the five officers.

(Testimony of Arthur F. Abbey.)

Q. All five of you were hanging onto the defendant; is that right?      A. All six of us.

Q. All six of you. Did you see Officer Shaffer grab [49] hold of the defendant's leg from behind?

A. No.

Q. You never saw that?      A. No.

Q. Did you see someone hit the back of the defendant at any time?      A. No.

Q. You didn't see the defendant fall down and hit any object at any time, did you?

A. No, I don't recall.

Q. What was Shaffer doing?

A. I don't recall.

Q. You don't recall. What was Mr. Wells doing?

A. I don't recall. We all had hold of his body. He was trying to struggle to get away. I don't know who had who or whereabouts on his waist. I know I had him around the leg.

Q. You had him around which leg?

A. Left leg.

Q. And which direction was the defendant facing at that time, if you can tell us?

A. I believe he was facing Diamond Head.

Q. Diamond Head. So that if I were the defendant, facing Diamond Head, you came this way and grabbed hold of my left leg? [50]

A. No.

Q. Is that right?      A. No.

Q. Was I facing this way (indicating) then? The defendant was facing this way (indicating) and the car this way (indicating)?

(Testimony of Arthur F. Abbey.)

A. His car was facing Ewa. He got out on the Diamond Head Side of his car.

Q. This way you mean (indicating)?

A. May I show you?

Q. Yes, come on, show us. We will put the car right in front of the jurymen, the front of the car being there (indicating). Do you understand, this is the front of the car,

A. Mr. Miho, may I change the chair. This is my property over here. The car was facing this way.

Mr. Miho: It will be clearer to the jury, if your Honor please——

The Court: Well, let the witness illustrate.

The Witness: He was sitting in his car, and got up out of his car, was standing like this (indicating), and I grabbed his left leg.

Q. (By Mr. Miho): He was just about a foot or two feet away from his car?

A. I don't recall how many feet.

Q. He was pretty close to the car anyway; is that right? [51]

A. I can't answer that, how close he was.

Q. Was the door in front of the defendant like this (indicating), then, all the way open, at right angles, more or less, his front door?

A. The door was open.

Q. Wide open?

A. The car door opens to the front.

Q. So the door was open this way (indicating)? Cavness, stand up—do it again. How was Cavness standing up? Like this (indicating)?

(Testimony of Arthur F. Abbey.)

A. (Indicating.)

Q. The door was open this way (indicating)?

A. Yes.

Q. Where was Wells?

A. I don't recall where he was at the time I grabbed him by the leg. The other officers were struggling.

Q. Where were the other officers?

A. I don't recall.

Q. There were six of you, you said. Where were the other five?

A. The defendant was sitting like that (indicating); after he pushed Agent Wells, he got up and the other officers grabbed him.

Q. The five officers were all around him like this (indicating). Here was a door and the other officers were all [52] around, hanging onto him, grabbing hold of him; is that what you are trying to tell us?

A. Where they were standing before he pushed Agent Wells, I don't recall.

Q. Well, when you grabbed hold of defendant's left leg, who was hanging onto his left arm?

A. I don't recall.

Q. Was anyone hanging onto his left arm?

A. I don't recall.

Q. Was anyone hanging onto his right arm?

A. I don't recall.

Q. Anyone hanging onto his body?

A. The other five officers had hold of him.

Q. Completely?

A. I don't know completely.

(Testimony of Arthur F. Abbey.)

Q. Was anyone hanging onto the back of his head?      A. I don't recall.

The Court: You had better come back here so we can hear.

(Witness resumes stand.)

Q. (By Mr. Miho): At that point, Mr. Abbey, did you see any bleeding on the back of the defendant's head?      A. I don't recall.

Q. Did you touch or see any blood on you?

A. No. [53]

Q. Did you have any blood on your body, any parts of your body, or your clothing at any time?

A. No.

Q. You didn't. Were you able to observe the defendant's face at that time?

A. After he fell, the first time he got up, yes.

Q. Tell us what you saw on his face.

A. He had his hand up there and his lip—by his face. His lip was all bleeding, a little bit here on his lip. (Indicating.)

Q. Do that again.

A. He had his hand here (indicating) and I noticed blood on his lip.

Q. Are you sure it was his left hand as you demonstrated?

A. I don't recall what hand.

Q. But he had one hand on his lip?

A. He had one hand like this (indicating) with his fist closed.

Q. And it was bleeding at that time?



(Testimony of Arthur F. Abbey.)

A. Yes.

Q. And his fist was still closed?

A. Right.

Q. That was when he got up the first time he fell down?      A. Right.

Q. Still you didn't see any bleeding on the back of his head? [54]      A. No.

Q. Did you see any black and blue marks, abrasions, below his right eye, contusions—Do you know what "contusion" means?      A. Abrasions.

Q. Did you see any contusions of the right eye at that time?      A. No, I didn't notice any.

Q. And the cheek?      A. I didn't notice.

Q. You didn't notice?      A. I didn't notice.

Q. And you didn't notice any laceration of his scalp?      A. No.

Q. You didn't notice any lacerations of his upper lip?

A. The only one I noticed was his lower lip, the one.

Q. Did you see any contusions of his right eye at any time, bruises on his right eye at any time?

A. No.

Q. You never saw it?      A. No.

Q. You took a good look at the defendant many times, though; is that right, both during and after the struggle?

A. What do you call a "good look"?

Q. Close up to him, right close up to him, three or [55] four feet, two feet maybe.

(Testimony of Arthur F. Abbey.)

A. I didn't pay any attention.

Q. You don't recall that either? A. No.

Q. Would you deny that he had an open scalp in the back, bruises on his right cheek, and contusions of his right eye? Would you deny that?

A. No.

Q. You wouldn't deny it? A. No.

Q. He might have been injured that way in the face? A. Yes.

Q. Did you see whether he had any bruises—Did you notice any kind of marks on his hands?

A. No.

Q. You didn't by any chance see anyone kick his face, did you? A. No.

Q. You didn't by any chance see anyone give the old-fashioned knee hold on him, did you?

A. No.

Q. You didn't see anybody punch him on the face, did you? A. No.

Q. All you know is that he was being subdued, you [56] grabbed hold of his left leg, he kind of fell down, he got up again, at that time he showed a little bleeding on his lips?

A. He fell down, he got up, I noticed the bleeding on his lip.

Q. How many times did he fall down in your presence? A. Two or three times.

Q. Two or three times. And during all that time you were hanging onto his left leg? A. No.

Q. Where were you hanging on when he got up the second time?

(Testimony of Arthur F. Abbey.)

A. The first time I grabbed his leg he kicked me loose. He fell down. The second time he fell down again I had hold of his leg.

Q. What is that?

A. The second time he fell down again I had hold of his leg.

Q. Had hold of his leg? A. Yes, sir.

Q. Had hold of his leg? A. Yes.

Q. And then?

A. The third time I believe he went down I didn't have hold of him.

Q. You didn't have hold of him? [57]

A. No.

Q. What were you doing?

A. Getting up off the ground.

Q. Then what did you do?

A. That is when Captain Whitford asked me to help him open up his right hand.

Q. What did you do?

A. I tried to open it up by using force, and I couldn't. He asked me to hit him with a blackjack on the back of his hand to force his hand open.

Q. What was the position of the defendant's body when Captain Whitford told you to use a blackjack on his hand?

A. He was in a prone position, face down.

Q. Hands outstretched?

A. Head down and hands like this (indicating).

Q. Like this (indicating)? A. Right.

Q. All right. And at that point where were you

(Testimony of Arthur F. Abbey.)

standing? When he was down like that, where were you standing?

A. I was trying to open his hand.

Q. Wasn't it open already? A. No.

Q. When he was down like this (indicating)?

A. He was laying like this (indicating).

Q. Not like this (indicating)? [58]

A. No.

Q. Like this (indicating). Where were you standing at that time?

A. Captain Whitford asked me to open his hand at that time.

Q. Where were you standing with relation to the defendant's body? A. Right side.

Q. And Captain Whitford was on which side of the defendant's body? A. Right side.

Q. You were standing, both of you, by his right arm?

A. I don't recall where I was standing. He asked me to open his hand.

Q. Don't recall on what side of his body you were standing?

A. I was on his right side.

Q. You are sure of that? A. Yes.

Q. On your knees or squatting like this (indicating)?

A. When I was opening his hand I was.

Q. What were you doing?

A. Trying to open his right hand.

Q. You couldn't open it? A. No. [59]

Q. Who had hold of his right arm?

(Testimony of Arthur F. Abbey.)

A. Captain Whitford.

Q. Where was he? In front of you?

A. He was not directly in front of me, practically on the side when he called me to open his right hand.

Q. Captain Whitford had hold of the defendant's right hand? A. Right wrist.

Q. Demonstrate it to me from where you are sitting, if this is the defendant's right wrist.

A. Like this (indicating).

Q. Captain Whitford had it like that?

A. Yes.

Q. Do it again.

A. (Indicating) Like that. Similar to this position (indicating). I don't recall. He had the lower part of his forearm.

Q. And you were squatting behind Captain Whitford? A. No, right side of him.

Q. On this side (indicating)? A. Yes.

Q. And then he told you to do what?

A. To open his hand.

Q. With a what?

A. He asked me to open his hand, and I tried to open [60] it like this (indicating) and I couldn't do it, so he asked me to hit him with a blackjack. I tapped him lightly, and it opened, and Captain Whitford removed a Vicks inhaler, part of it, and shattered pieces.

Q. At that point where was your blackjack?

A. What was that?

(Testimony of Arthur F. Abbey.)

Q. Where did you keep this blackjack ordinarily?      A. My hip pocket.

Q. Right hip pocket?      A. Right.

Q. You can take it off right away?

A. Right.

Q. Do you have it with you by any chance?

A. No.

Q. You didn't bring it today?      A. No.

Q. What is inside a blackjack?

A. I didn't examine one. I don't know.

Q. You don't know. So you used that blackjack to tap the defendant's right wrist; is that right?

A. His right hand, back of his hand.

Q. And then it opened?      A. Right.

Q. And then these four pieces came out?

A. I don't recall how many pieces came out.

Q. Well, what came out of his right hand?

A. Part of a Vicks inhaler tube.

Q. What part of a Vicks inhaler tube? What part?

A. I don't recall what part of it.

Q. Well, isn't that what you were trying to get, holding onto his hand; is that what all the struggling was about?      A. Right.

Q. And you don't know what came out of his hand after all that struggling and use of the blackjack?

A. I said part of a Vicks inhaler tube.

Q. I am asking you what part of the Vicks inhaler tube. You didn't see anything come out of his right hand?      A. I did see.



(Testimony of Arthur F. Abbey.)

Q. What did you see?

A. Part of a Vicks inhaler tube.

Q. What part? A. Part of it.

Q. What part? A. I don't recall.

Q. But his hand came open after you used a blackjack; his hand came open; right?

A. Partly open. Captain Whitford removed part of the Vicks inhaler tube out of his hand.

Q. And you don't know what part he removed?

A. No.

Q. And Captain Whitford removed something out of his [62] right hand? A. Right.

Q. You say it was a Vicks inhaler part?

A. Right.

Q. Big parts or small parts, or how many parts?

A. There was quite large parts; I noticed them.

Q. Didn't he show it to you: "Here is the stuff," or something like that?

A. As he took them out of his hand, I noticed it.

Q. He took it out of his hand this way (indicating)?

A. His hand was open; he picked it up.

Q. Show again. Demonstrate.

A. Like that (indicating).

Q. Whitford took it out like that?

A. Yes.

Q. Didn't he show it to you?

A. Not at the time. I don't recall.

Q. Did he show it to you at any time later?

(Testimony of Arthur F. Abbey.)

A. Yes.

Q. Where? A. At the police station.

Q. Then you knew what came out of his right hand?

A. Part of a Vicks inhaler tube.

Q. What part, then? What part, then? Tell us.

A. Well, part of it. I can't describe what part of it. [63] It was shattered.

Q. You don't know what came out of his right hand, if anything; isn't that right? A. No.

Mr. Hoddick: Objected to as argumentative.

The Court: Overruled.

Q. (By Mr. Miho): You don't know, do you?

A. It was a part of a Vicks inhaler tube.

Q. Since you cannot tell us what part it is, I am asking you that you don't know what actually, if anything, came out of his right hand; isn't that right? A. No.

Q. The answer is "yes"; isn't that right?

A. I said part of a Vicks inhaler tube.

Q. Still you don't know what part came out of it; is that right?

A. It was shattered pieces.

Q. And then what did you do?

A. Agent Wells asked me to open up his left hand.

Q. Did you use a blackjack to open up his left hand? A. I did.

Q. And who was hanging onto his left hand?

A. Agent Wells.

(Testimony of Arthur F. Abbey.)

Q. Hanging onto his left arm?

A. Yes. [64]

Q. Left wrist just like Officer Whitford?

A. Similar to Captain Whitford had.

Q. Show.

A. Had the lower part of his left wrist like this (indicating).

Q. Do it again.

A. I don't know exactly how he had it, but in this fashion (indicating).

Q. That is when the defendant was prone, down flat on his stomach?

A. He was on his stomach.

Q. Where was Shaffer?

A. I don't know.

Q. And how did you use the blackjack on him. Did you come over to the left side of the defendant?

A. I tried to open his hand first and then Agent Wells told me to hit him on the back with a blackjack.

Q. You were still on the right side?

A. When Agent Wells asked me to open up his left hand, I came over on that side.

Q. You jumped over the defendant's body?

A. I don't recall how I got over there. I was over there.

Q. You used a blackjack to open his left wrist?

A. After I tried to open it. [65]

Q. You couldn't open it with both your hands?

A. No.

(Testimony of Arthur F. Abbey.)

Q. You tried with both hands?

A. I don't recall. I used my hands.

Q. You used your hands, but you couldn't open the defendant's wrist?      A. No.

Q. So you used the blackjack?      A. Yes.

Q. And did his left hand open?      A. Yes.

Q. And what came out of his left hand?

A. A small object.

Q. What object?

A. This object (indicating).

Q. This is what came out?

A. There was an object fell from his hand, and after he says take him in the house. I handcuffed him and I went back to where this fell, and picked it up.

Q. Mr. Abbey, you said——

The Court: Nobody has marked it for identification. All I know is that it came out of a small envelope we were talking about prior to the recess.

Q. (By Mr. Miho): Anyway, something like that came out of his left hand? [66]

A. An object fell out of his left hand.

Q. You don't want to say exactly whether this came out of his left hand?

A. I didn't notice.

The Court: What?

The Witness: I didn't notice. There was an object that fell.

Q. (By Mr. Miho): You are not so sure now, are you, whether this actually came out of his left hand or not; you are not so sure?      A. No.

(Testimony of Arthur F. Abbey.)

Q. But you said a while ago, pointing at this thing here: This thing fell out.

A. I said an object fell out. I picked this up.

Q. I didn't understand you to say you picked this up from his left hand.

A. I picked it up from the ground.

Q. Later on? A. Yes, sir.

Q. But you saw something come out of his left hand? A. Yes.

Q. And Agent Wells was hanging onto his left hand at that time? A. Yes.

Q. Did you see Agent Wells pick up anything at that time [67] from his left hand, like Captain Whitford did from the right hand of the defendant? A. No.

Q. You didn't see Agent Wells pick up anything; is that right? A. No.

Q. But you are sure something fell out of his left hand? A. Yes.

Q. And nobody picked it up when it came out of his left hand? A. No.

Q. Mr. Abbey, you never saw the defendant hit anybody at any time except for the first push of Agent Wells; is that right?

A. And he was struggling after we was trying to subdue him.

Q. I am asking you if you saw the defendant Cavness hit any of you six officers at any time during this struggle. You know what I mean by "hit," don't you? A. Haul out and strike him.

(Testimony of Arthur F. Abbey.)

Q. Yes.           A. No.

Q. All he was trying to do was get up and get away from people; is that right?

A. If I recall. [68]

Q. Now, can you tell us how many times you saw the defendant fall down?

A. Two or three times.

Q. What is that?           A. Two or three.

Q. Two or three times. Now, after you opened the defendant's left hand with your blackjack, then tell us what happened?

A. He says, "Take me in the house." I immediately handcuffed him.

Q. You handcuffed him while he was still flat on his stomach; is that right?

A. I don't recall whether he was on his stomach or standing up.

Q. You don't recall?           A. No.

Q. But you handcuffed him?           A. Yes.

Q. So the struggle, as you call it, ceased after his left hand was opened by you with a blackjack?           A. Yes.

Q. That was the end of everything so far as the struggle was concerned?           A. Yes.

Q. Did you see any bleeding from the back of his head [69] at that time?           A. No.

Q. Tell us how you handcuffed him, what position you handcuffed the defendant.

A. Around his back.

Q. Then you must have gone to his back?



(Testimony of Arthur F. Abbey.)

A. Yes.

Q. You grabbed both his hands and handcuffed them together?

A. His hands were behind his back.

Q. And you are sure you were the one who handcuffed the defendant?      A. Yes.

Q. Still you didn't see any bleeding from the back of the defendant's head?

A. I didn't notice none.

Q. And then you took him to the house?

A. No.

Q. Who took him to the house?

A. I don't recall.

Q. Didn't you go up to the house?

A. Not at that time.

Q. Did all of you six officers go up to the house with the defendant?      A. No. [70]

Q. What did you do?

A. I stayed there in the yard, went back to the base of the tree to see what fell from his hand.

Q. And then that is when you found this piece you indicated you saw on that table?

A. Yes, sir.

Q. Then you called Agent Wells?

A. Yes.

Q. And he came running out?      A. Yes.

Q. And then you put it back on the ground again?      A. Yes.

Q. You told him, "This is where I found this stuff"?

(Testimony of Arthur F. Abbey.)

A. I don't recall that that was the words.

Q. Well, something like that; is that right?

A. Yes.

Q. And then he told you, "Well, put it in your pocket and give it to me at the vice squad," or words to that effect? A. Yes.

Q. So you put it in what pocket?

A. My left pocket of my pants.

Q. What?

A. If I recall, it was my left front pocket of my pants.

Q. Of your pants? [71] A. Yes.

Q. I see. You kept it there? A. Yes.

Q. You didn't by any chance use the blackjack on the defendant's head, did you? A. No.

Q. Are you positive? A. Positive.

Q. Did you see anyone else use a blackjack on the defendant's head? A. No.

Q. You stated, I believe, while you were waiting to raid the defendant's place, you said something about going to the kitchen; right? A. Yes.

Q. You went to the kitchen from the living room, your sitting room? A. Right.

Q. Where the officers were sitting?

A. Right.

Q. And you went back and forth from the sitting room to the kitchen to get water; is that right?

A. Yes.

Q. All the officers wanted to drink water?

A. I don't recall. [72]

(Testimony of Arthur F. Abbey.)

Q. Do you remember about how many times you went back to the kitchen?

A. Someone asked me if he could have a drink of water. I went out and got a glass of water and I told them to make themselves at home. I only got water one time.

Q. Ice water?

A. I don't recall whether it was ice water.

Q. Did you give them anything to eat, chew on?

A. Not that I recall. I told them to help themselves. I didn't pay no attention.

Q. How long have you been a reserve police officer, you say?

A. Approximately a year.

Q. Approximately a year?                      A. Right.

Q. And this raid was part of your reserve officer's duties, or was it outside of your powers of reserve officer?

A. What was the question?

Q. This raid that you took part in of the defendant's premises, was that during your hours as a reserve police officer on duty or not?

A. I was on duty.

Q. You were on duty?

Mr. Miho: That is all.

The Court: Redirect examination. [73]

(Testimony of Arthur F. Abbey.)

Redirect Examination

By Mr. Hoddick:

Q. Mr. Abbey, will you put those two pieces which you saw were formerly stuck together back in the envelope that you took them out of?

A. (Returns pieces to envelope.)

Mr. Hoddick: Your Honor, may I have that envelope marked for identification purposes.

The Court: It may be marked for identification as——

The Clerk: A-1. United States A-1, for identification.

Mr. Hoddick: And may I have the other envelope which was taken out of U. S. A, for identification purposes, also marked for identification purposes.

The Court: Yes.

The Clerk: U. S. A-2, for identification.

(Thereupon the items above referred to were marked U. S. Exhibits A-1 and A-2, for identification.)

Mr. Hoddick: May I have the Court's indulgence for a moment.

The Court: Yes.

Mr. Hoddick: No further questions.

The Court: Next witness. You are excused.

(Witness excused.) [74]

Mr. Hoddick: Mr. Carr, please.

